



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **27.04.2021**

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THE HON'BLE MR.JUSTICE T. S. SIVAGNANAM
and
THE HON'BLE MRS.JUSTICE S.ANANTHI

W.A. (MD)No.1297 of 2020
and C.M.P. (MD)No.7402 of 2020

P.Vanitha ... Appellant/Petitioner

-Vs-

1.The Secretary,
Arulmigu Palani Andavar Arts
College for Women,
Palani.

2.The Joint Director of Collegiate Education,
Madurai Region, Vaidyanathaier Street,
Shenoy Nagar,
Madurai - 625 020.

3.The Commissioner,
Dindigul Municipality,
Dindigul.

...Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of Letter Patent against the order dated 11.11.2020 made in W.P.(MD)No.842 of 2014.

Prayer in WP(MD). 842/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records connected with the impugned order passed by the 1st respondent in his proceedings Na.Ka.No. A1/26/2011 dated 18.02.2011 and the consequential order passed by the 1st respondent in his proceedings R.C No. 891/2012/C6 dated 28.10.2013 and quash the same and consequently direct the respondents to alter the date of birth of the petitioner as per the Birth Extract issued by the Registrar of Births and Deaths, Dindigul Municipality dated 05.01.2009 and in the light of the Judgment of this Honourable court reported in (2009) 8 MLJ 1109 and in 2011 (1) CWC 811.



For Appellant : Mr.S.Govindan
For Respondents : Mr.K.P.Krishnadoss,
Spl. Govt. Pleader for R2
for R1 & R3- No Appearance

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JUDGMENT

[Judgment of the Court was made by **T. S. SIVAGNANAM, J.,**]

This Writ Appeal filed by the Writ petitioner is directed against the order dated 11.11.2020, made in W.P.(MD)No.842 of 2014.

2. The appellant filed a Writ Petition, challenging the proceedings of the respondent institution dated 18.02.2011, and the consequential communication, dated 28.10.2013. We need not labour much to arrive at a decision in this case and consider as to what relief the appellant is entitled to in this appeal.

3. The appellant has joined the respondent institution on 30.01.2009, as Assistant Professor in English and at the time of opening the service book upon joining, her date of birth was recorded as 15.08.1970, based upon the school records. Since employee is entitled to file an application for alteration of date of birth within five years from the date of entering service in terms of Rule 49 of the State and Subordinate Service Rules, the appellant submitted an application on 25.01.2011, to alter her date of birth as 13.03.1972, instead of 15.08.1970. The basis for such application was the birth certificate issued by the Dindigul Municipality. This was rejected by the respondent institution, stating that the date of birth recorded in terms of the educational certificates cannot be altered. Subsequently, the appellant had also filed a writ petition in W.P.(MD)No.4422/2011. In that, the appellant, sought for a direction to consider her representation dated 15.02.2011 and alter her date of birth in the light of the birth register maintained in the Dindigul Municipality. The Writ Petition was disposed by order dated 06.02.2012. Though the ultimate direction was to consider the application and pass appropriate orders, within a time frame, we find that the learned single Judge has elaborately dealt with the factual position as well as noted various judgments, which are relevant to this case. It would be worthwhile to refer to a few paragraphs of the said order:

"4.The learned Counsel appearing for the petitioner argued that the first respondent ought to have considered the petitioner's representation seeking for alteration of date of birth in the light of Rule 49



of the State and Subordinate Service Rules as well as the Government letter dated 23.06.2004, whereby certain norms were prescribed for considering the application seeking for alteration of date of birth. He also cited decisions of this Court reported in **2011(1) CWC 811** in the case of **K.C.Kalaikovan vs. The Commissioner, Revenue Administration, Chepauk, Chennai - 5** and **2009 (8) MLJ 1109** in the case of **R.Deepak vs. Chairman, Tamil Nadu Uniform Service** in support of his case to the effect that the certificate issued by the competent authority is a valid proof.

5.The learned Special Government Pleader fairly conceded that since the petitioner has made an application within five years from the date of joining in the first respondent-college, her application for alteration of date of birth can be considered as per Rule 49 of the said Rules.

6.Heard the learned Counsel for the petitioner as well as respondents.

7.In the decision reported in **2011(1) CWC 811** in the case of **K.C.Kalaikovan vs. The Commissioner, Revenue Administration, Chepauk, Chennai - 5**, the learned Judge has observed at paragraphs 8 and 9 as follows:-

"8.The Hon'ble Supreme Court has clearly held that the statement contained in the School Admission Register based on information given would be authenticated evidence unless it is established by unimpeachable contrary materials. In this case, the Petitioner has established his plea for correction of date of birth based on the Birth Register extract, which is the most appropriate document and the decision of the Apex Court **CIDCO v. Vasudha Gorakhnath Mandevlekar, CDJ 2009 SC 1100**, referred to supra will therefore, squarely apply to the case on hand.

9.When the birth register extract has been produced, the Respondents have no justification in insisting upon further evidence. The authority cannot disown the Birth Certificate issued by the Competent Authority unless it is held to be false or obtained by misstatement. It will be valid so long it is in force."

8.Likewise in the another decision reported in **2009(8) MLJ 1109** in the case of **R.Deepak vs. Chairman, Tamil Nadu Uniform Service** the learned Judge has observed at paragraph 8 as follows:-

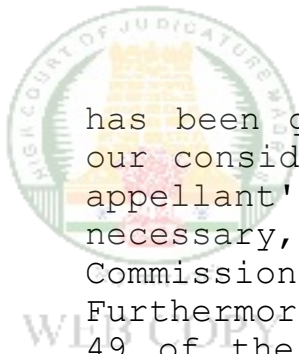
"8.It is pertinent to note that the



certificate issued by the second respondent herein is correct as already pointed out that the said authority is the competent authority and further the certificate issued by the second respondent reveals that the said certificate is based on the extract taken from the original registered which makes it crystal clear that the date of birth of the petitioner was recorded and incorporated the date of birth of the petitioner on the next day of his birth and there is no reason to doubt about the date of birth certificate issued by the second respondent herein."

9. On considering the above said orders passed by the learned Judges, I am of the view that the second respondent should consider the petitioner's application based on the birth certificate issued by the competent authority. As the petitioner's application is still pending before the second respondent for seeking for alteration of the date of birth, he has to consider the same and pass orders on the petitioner's application by taking note of all the above stated facts and circumstances. While passing an order the first respondent should bear in mind, the orders passed by this Court in **2011(1) CWC 811** in the case of **K.C.Kalaikovan vs. The Commissioner, Revenue Administration, Chepauk, Chennai - 5** and **2009(8) MLJ 1109** in the case of **R.Deepak vs. Chairman, Tamil Nadu Uniform Service**. Therefore, the first respondent is directed to consider the application of the petitioner dated 25.01.2011 and pass appropriate orders within a period of 12 weeks from the date of receipt of a copy of this order."

4. Though such a detailed directions were issued, the respondent institution, by order dated 28.10.2013, rejected the same, stating that there is no provision for alteration of date of birth. The appellant filed the Writ Petition, which has been dismissed, alleging that there is some suspicion. In fact, such was never the issue raised by the respondent institution when passing the orders, dated 18.02.2011 and 28.10.2013. However, the department or the institution can cause verification with regard to the genuinity of the certificate, since the birth extract is a public record. There is a presumption attached to its validity. If such presumption is rebuttable, but it should be done in the manner known to law. Furthermore, the date of registration of birth is on 29.03.1972. The copy application was made by the petitioner in C.A.No.10768/2008 and the copy of the birth extract



has been given by the Municipality on 05.01.2009. Therefore, in our considered view the respondent institution should consider the appellant's application for alteration of her date of birth and if necessary, they can always cause verification from the Commissioner of Municipality and then take a decision. Furthermore, the Writ Court has not rendered any finding that Rule 49 of the State and Subordinate Services Rules cannot be made applicable, because under the provisions of the Tamil Nadu Private Colleges Regulation Act, there is no such provision and if that is so, the provision of State and Subordinate Services Rules can be adopted. Therefore, we are of the view that the appellant's application for alteration of her date of birth should be considered by the respondents, after due verification.

5. In the result, this Writ Appeal is allowed. The order passed in the Writ Petition is set aside and the matter is remanded to the respondent institution to consider the appellant's application, cause verification of the genuinity of the birth extract given by the appellant from the Commissioner of Dindigul Municipality and thereafter, pass orders on merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

vsm

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Secretary,
Arulmigu Palani Andavar Arts
College for Women,
Palani.



2.The Joint Director of Collegiate Education,
Madurai Region, Vaidyanathaier Street,
Shenoy Nagar,
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3.The Commissioner,
Dindigul Municipality,
Dindigul.

+1 CC to SPL GP (SR-17957[F] dated 28/04/2021)

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and C.M.P. (MD)No.7402 of 2020
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