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IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 03.01.2022
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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.250 of 2022

Jayaprakash

... Petitioner

Vs.

1. The Secretary,
Department of School Education,
Secretariat, Chennai-9.
2. The Director,
Directorate of Government Examination,
DPI Complex,
College Road,
Chennai - 600 006.
- 2.The Joint Director of School Education,
O/o. The Director of School Education,
DPI Complex,
College Road,
Chennai - 600 006.
- 3.The District Education Officer,
Office of the District Educational Officer,
Villupuram-1.
4. The Headmaster,
Government High School,
Rambakkam, Villupuram District.

.. Respondent

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to carry out the correction in respect of the petitioner's date of birth in the SSLC mark statement and transfer certificate from 27.06.1993 to 26.06.1993.

For Petitioner : Mr.S.C.Viswanth
For Respondents : Mr.Stalin Abimanyu
Additional Government Pleader



O R D E R

This Court, on 09.11.2021, inadvertently, without verifying the orders passed by this Court as well as the Hon'ble Apex Court for correction of date of birth in the School records, dismissed W.P.No.29556 of 2019. Hence, the order dated 09.11.2021 passed in W.P.No.29556 of 2019 is recalled.

2.The case of the petitioner is that after completion of his School education, he came to know that his actual date of birth was not mentioned in their School records. Hence, he made representation to the Educational Authorities seeking correction in his date of birth, however, the Educational Authorities rejected his request on the ground that Rule 5 of the Secondary School Leaving Certificate Rules prohibits alteration of date of birth after the candidates leave the School and therefore it is beyond their jurisdiction to make correction in the date of birth in the School records. Hence, the petitioner has filed the writ petition.

3.The respective learned counsel appearing for the petitioner submitted that the issue involved in the writ petition is no longer res integra and further submitted that already the Hon'ble Apex Court as well as this Court has dealt with similar issue and has held in favour of similarly situated persons like the petitioner and in support of his contentions, he relied upon series of decisions, which are as follows:

(i)decision of the Hon'ble Apex Court reported in (2021) 7 Supreme Court Cases 535 (Jigya Yadav (Minor) Vs. Central Board of Secondary Education);

(ii)decision of the Hon'ble Division Bench of this Court in W.A.No.3798 of 2019 (S.Indumathi Vs. The Chief Secretary to Government) dated 09.12.2019;

(iii)decision of this Court in W.P.No.6026 of 2020 (Maullisha N.Y. Vs. The Director of Government Examinations) dated 10.03.2020; and

(iv)decision of the Madurai Bench of this Court in W.P.(MD) No.9340 of 2009 (S.Rajesh Kumar Vs. The Secretary, Board of Higher Secondary Education) dated 18.09.2012.

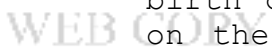
4.Per contra, the learned Additional Government Pleader submitted that initially the parents of the petitioner made self declaration declaring the date of birth of the petitioner and based on the self declaration given by them, the School Authorities entered date of birth in the School records. He further submitted that as per Rule 5 of the Secondary School Leaving Certificate Rules, correction of date of birth in School records cannot be entertained after the candidates leave the School and hence the Director and Joint Director of School Education have given written instruction to the Educational Authorities not to entertain alteration of date of birth and



5. The learned Additional Government Pleader further submitted that in the present case, the petitioner completed his School education much earlier and after lapse of several years, he made representation seeking correction in his date of birth, which cannot be entertained. In support of his contentions, he relied upon the decision of this Court made in W.P.No.16510 of 2018 (S.Indumathi Vs. The Chief Secretary to Government) dated 11.07.2018, the relevant portion of which reads as follows:

"7.It may be true that the petitioner was born on 17.07.1997, but for the purpose of entry into the school, the parents would have given the Date of Birth of the petitioner as 17.05.1997. If the actual Date of Birth 17.07.1997 is taken into account, then the entire qualification obtained by the petitioner/ candidate will have to go, as she could not have been admitted in I Std. Based on the date of birth, namely 17.07.1997. In order to admit the petitioner/ student into the School, the Date of Birth has been corrected as 17.05.1997 and that the same continued till the completion of her XII Std. The student could not, later, on the ground that the parents have given the wrong Date of Birth and that needs to be altered, and that for the fault of the parents, the child/ student not be affected, cannot be accepted. If such a contention is going to be accepted, and that the petitioner wants alteration of the Date of Birth as 17.07.1997, as stated supra, the entire qualification itself vanishes, as the student has no locus-standi to enter I Std. Based on the Date of Birth as 17.07.1997.

<https://hcservices.ecourts.gov.in/hcservices/>



7. The facts are not in dispute. Admittedly the date of birth of the petitioner was entered in the School records based on the self declaration made by their parents at the time of admitting them in the respective Schools. It is also admitted fact that the petitioner completed his School Education much earlier and thereafter he came to know that the date of birth was wrongly entered in the School Leaving Certificate. The petitioner is in possession of the birth certificates issued by the respective public Authorities and based on that, the petitioner made representation to the School Authorities seeking correction in their date of birth in the School records, however, his request was rejected on the ground that Rule 5 of the Secondary School Leaving Certificate Rules prohibits alteration of date of birth after the candidates leave the School and therefore it is beyond their jurisdiction to make correction in the date of birth in the School records.

9. The very same issue has been dealt with by the Hon'ble Apex Court as well as this Court. For better appreciation, the relevant portion of the decisions relied upon by the learned counsel appearing for the petitioner is extracted hereunder:

"15. To buttress the above submission, it is urged that CBSE, being an autonomous society registered under the Societies Registration Act, 1860, has the power to make, amend or delete its Rules, Regulations and Bye-laws. Accordingly, Bye-law 69.1 was amended as the basic record of a student is kept by the school and the Board has no option but to rely upon the school record. It is further submitted that the parents of the appellant had ample opportunity to correct the school record and they chose not to do so. In fact, the respondent adds, they



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repeatedly filled the same particulars of their names in all the school forms from time to time.

16. The Board has also filed elaborate written submissions to support their case. It is submitted that the Examination Bye-laws of the Board are statutory in nature as they were framed in furtherance of the powers granted to the Board as per the Government of India Resolution dated 1-7-1929 and deviation cannot be permitted from the bye-laws. As regards the argument of violation of fundamental rights, the Board has submitted that there may be a fundamental right to be identified as per the choice of an individual, but there can be no fundamental right to claim that the changed identity must be operative since birth thereby compelling all including statutory bodies to carry out changes in documents issued by them. It is urged that any other view would amount to misuse of liberty and cause serious confusion at different level. Reliance has been placed upon *Rayaan Chawla v. University of Delhi* [*Rayaan Chawla v. University of Delhi*, 2020 SCC OnLine Del 1413 : (2020) 275 DLT 314] to support this position.

17. The Board has further submitted that the restrictions/conditions for change of name and date of birth are reasonable as all the details are supplied by the students/parents at various stages of admissions which offers a prima facie guarantee of genuineness. It is submitted that change of name and date of birth in a reckless manner could have serious repercussions – misuse for employment, manipulating age of the accused, etc. Reliance has been placed upon *Sanjeev Kumar Gupta v. State of U.P.* [*Sanjeev Kumar Gupta v. State of U.P.*, (2019) 12 SCC 370 : (2019) 4 SCC (Cri) 379] to illustrate this.

182. The impugned judgments categorically note that the request for changes could not be permitted as per the bye-laws. Thus, there was no demonstration or inquiry to determine the existence of any legal right in favour of students. Even if we assume that courts issued directions purely on the basis of



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fundamental rights, there is no discussion or inquiry in this regard. More so, there is no attempt to examine the vires of the bye-laws in light of the breach of fundamental rights, as discussed in the initial part of this judgment. Absent any such adverse determination on the validity of the applicable rules, the fundamental principle of rule of law demands that such rules be given their intended effect. Even if a constitutional court feels that the case at hand is deserving of an extraordinary remedy, it may do so using its wide powers under Article 226 but only upon specific appraisal of the facts of the case and after duly demonstrating the extraordinary character of the case. Despite holding that the prayers are impermissible under the bye-laws, the Courts in the present set of cases went on to issue directions to the Board without having any regard to the factual circumstances of the case or to the nature of changes sought by the students, by mechanically relying upon the dictum in Subin Mohammed [Subin Mohammed S. v. Union of India, 2015 SCC OnLine Ker 39731 : (2016) 1 KLT 340] . We must note that Subin Mohammed [Subin Mohammed S. v. Union of India, 2015 SCC OnLine Ker 39731 : (2016) 1 KLT 340] is not in challenge before us but must be now understood in terms of opinion recorded in this judgment. Our concern is with the manner in which mechanical reliance has been placed upon the earlier decision for deciding cases which involved an altogether different set of changes.

194. As regards request for "change" of particulars in the certificate issued by the CBSE, it presupposes that the particulars intended to be recorded in the CBSE certificate are not consistent with the school records. Such a request could be made in two different situations. The first is on the basis of public documents like birth certificate, Aadhaar card, election card, etc. and to incorporate change in the CBSE certificate consistent therewith. The second possibility is when the request for change is due to the acquired name by choice at a later point of time. That change need not be backed by public documents pertaining to the



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candidate.

195. In light of the above, in exercise of our plenary jurisdiction, we direct the CBSE to process the applications for correction or change, as the case may be, in the certificate issued by it in the respective cases under consideration. Even other pending applications and future applications for such request be processed on the same lines and in particular the conclusion and directions recorded hitherto in paras 193 and 194, as may be applicable, until amendment of relevant bye-laws. Additionally, the CBSE shall take immediate steps to amend its relevant bye-laws so as to incorporate the stated mechanism for recording correction or change, as the case may be, in the certificates already issued or to be issued by it."

(ii) Decision of the Hon'ble Division Bench of this Court made in W.A.No.3798 of 2019 (S.Indumathi Vs. The Chief Secretary to Government) dated 09.12.2019:

"12. Appellant herein has stated that there is a discrepancy in the Date of Birth recorded in the passport and in her school certificate. It has been contended before us that the discrepancy is affecting her admission in a course, outside the Country and that the correction of Date of Birth is exactly two months. If any corrections are made, it will not cause prejudice to anybody. It is also stated that the admission to a course which she has got abroad will get affected due to this discrepancy.

13. We, at the moment are not entering into the issue as to whether the order, dated 18/9/2012, passed by the learned Single Judge in W.P.(MD) No.9340 of 2009, followed in W.P.No.23716 of 2014, is correct or not.

14. In view of the fact that the career of the appellant has bright prospects, and that she might have lose her seat because of the discrepancy in the date of birth, we permit the correction of date of birth to 17/7/1997 in the peculiar facts of this case only and for the said purpose only. This case



shall not be cited as a precedent for any other case."

(iii) Decision of this Court in W.P.No.6026 of 2020 (Maullisha N.Y. Vs. The Director of Government Examinations) dated 10.03.2020:

"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



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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 canceling 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 sub-rule(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 subrule(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 subrules (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



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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



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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



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to the respondents to consider the birth certificate of the petitioner and any other documents produced by the petitioner and deal with the representations made by the petitioner on 07.06.2019 and 27.01.2020 and make necessary changes in the date of birth as 11.12.1999 in the Secondary School Leaving Certificate and the Higher Secondary Course Certificate. The petitioner is directed to make a fresh representation to the respondents along with a copy of the representations dated 07.06.2019 and 27.01.2020 and a copy of this order. This exercise shall be completed by the respondents within a period of four weeks from the date of receipt of copy of this order."

(iv) Decision of the Madurai Bench of this Court in W.P.(MD) No.9340 of 2009 (S.Rajesh Kumar Vs. The Secretary, Board of Higher Secondary Education) dated 18.09.2012:

"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



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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



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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."

10.Perusal of the decisions cited supra makes it clear that 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.

11.Further, the Hon'ble Apex Court in exercise of the plenary power, has issued direction to the CBSE to process the applications for correction or change, as the case may be, in the certificate issued by it.

12.In view of the above, this Court is inclined to extend the same benefit to these petitioner also. The respondents are directed to process the application made by the petitioner for making necessary correction in the date of birth in his School records. The petitioner is directed to produce the relevant public document to enable the respective School Authorities to make necessary corrections in the School records.

13.The writ petition is accordingly allowed. No costs.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar



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To

1. The Secretary,
Department of School Education,
Secretariat, Chennai-9.
2. The Director,
Directorate of Government Examination,
DPI Complex,
College Road,
Chennai - 600 006.
2. The Joint Director of School Education,
O/o. The Director of School Education,
DPI Complex,
College Road,
Chennai - 600 006.
3. The District Education Officer,
Office of the District Educational Officer,
Villupuram-1.
4. The Headmaster,
Government High School,
Rambakkam, Villupuram District.

+1 cc to Mr.S.C.Viswanth, Advocate Sr.NO. 2277
+1 cc to Government Pleader Sr.NO. 2264,2741

W.P.No.250 of 2022

mg(CO)
A.SK(28/03/2022)