IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

WP.No.28123/2016 & WMP.No.24261/2016

Tmt.Rahina T.P. ... Petitioner

Vs

1.The Deputy Collector [Revenue]
-cum-Regional Administrator
Mahe, State of Puducherry.

2.The Deputy Tahsildar [Revenue]
Sub Taluk Offic, Mahe, Puducherry.

3.The Secretary to Government
[DP&AR-II Exam]
Government of Puducherry.

4.The Director of School Education
Directorate of School Education
Govt. of Union Territory of Puducherry
Puducherry. ... Respondents

***R4 impleaded as per order dated 26.09.2016 made
in WMP.No.25613 & 25614/2016 in WP.No.28123/2016

Prayer: Writ Petition filed Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records pertaining to the order of the 1st respondent dated 28.06.2016 vide No.1464/DCRM/A-1/2015-2016 impugned in this writ petition and quash the same and to direct the respondents to issue the nativity/residential certificate in favour of the petitioner as per the request.

For Petitioner	:	Mr.V.Manohar
For RR 1 to 4	:	Mr.C.T.Ramesh Additional Government Pleader [Puducherry]

ORDER

(1) Challenge in the writ petition is to the rejection of the claim for Nativity Certificate made by the petitioner.

(2) The petitioner who is a resident of Pandakkal, Puducherry, after her marriage with one Mr.K.K.Umanath, a native of Pandakkal, Mahe, applied for the post of Primary School Teacher called for by the Government of Puducherry and got selected. Upon selection, the petitioner was required to produce a Nativity Certificate. The Prospectus that was issued calling for applications required that the applicant should be a native of Puducherry either by birth or by continuous residence.

(3) Nativity by birth is shown to mean *"the applicant should have been* ***born in the Union Territory of Puducherry*** *and should have been ordinarily residing within the Union Territory of Puducherry* ***prior to the date of application."***. Nativity by continuous residence is shown to mean *"the applicant should have been residing continuously for five years in the Union Territory prior to the date of application."*

(4) The petitioner would claim that she having been married to a native of Mahe and that she is continuously residing at Mahe, is a native of Mahe and she is residing at Mahe on the date of the application and therefore, she is entitled to be favoured with a Nativity Certificate. The claim of the petitioner for Nativity Certificate was rejected by the Deputy Tahsildar [Revenue], Mahe, on the premise that the petitioner who has married one Mr.K.K.Umanath, a native of Mahe, were residing near Onian High School, Kodiyeri Village of Thalassery Taluk, Kannur District, Kerala State, on the date of application. According to the Deputy Tahsildar [Revenue], Mahe, the Nativity Certificate could be issued to a person who is shown to

be continuously residing in the Union Territory for a period of five years prior to the date of application. Since the petitioner was not residing at Union Territory continuously for a period of five years prior to the date of application and she was residing at Thalassery, Kannur District, Kerala, according to the Deputy Tahsildar [Revenue], Mahe, the petitioner cannot be treated as a native of Mahe and cannot be favoured with a Nativity Certificate.

(5) Mr.V.Manohar, learned counsel for the petitioner would vehemently contend that the entire premise on which the rejection order has been passed is erroneous. He would draw my attention to G.O.Ms.No.48 dated 12.12.2002 issued by the Revenue Department of the Government of Puducherry wherein the procedure and conditions for issuance of Nativity Certificate have been detailed. According to the learned counsel, the Government Order contemplates two kinds of nativity. One, nativity by birth and the other, nativity by continuous residence. It is not in dispute that the petitioner was a resident of Mahe as she had got married to a person from Mahe and had shifted her residence to her husband's house. The moot question could be

whether such marriage and shifting of residence would disentitle her from claiming as a native of Mahe.

(6) As regards **Nativity by birth,** according to the Government Order, means, *"the applicant should have been born in the Union Territory of Pondicherry and should have been ordinarily residing within the Union Territory prior to the date of application. In order to satisfy the criterion of "Ordinarily resident", the person should have been staying either by himself or with his family within the Union Territory of Pondicherry continuously with a clear intention of residing there permanently, but for temporary absences from such place of residence for reasons of job or education, etc. As long as the applicant is able to establish satisfactorily his intention to return to his place of residence on the conclusion of such temporary absence, he may be considered to be a person ordinarily residing in the Union Territory."*

(7) **Nativity by continuous residence** means *"the applicant should have been residing continuously for five years in the Union*

Territory prior to the date of the application.".

(8) Relying heavily upon the above meaning as scribed to two different kinds of nativity, the learned counsel for the petitioner contended that once it is shown that the petitioner is residing in Mahe since her marriage, she automatically acquires nativity by continuous residence and if she is able to show that she has an intention to return to her place of residence on the conclusion of temporary absence, she shall be considered to be a person ordinarily residing within the Union Territory. This was clarified by a Note issued by the Revenue Department on 07.01.2016, clarifying the difference between the Nativity Certificate and the Residence Certificate. The said Note very clearly states that if the person is absent from Puducherry and shifts her residence to another house in Tamil Nadu after her marriage, she cannot be treated as a resident of Puducherry. The said clarificatory letter further states *"though Nativity Certificate by birth can be issued, Residence Certificate for having continuous residence of five years may not be possible to be issued to these candidates who have shifted their residence to Tamil Nadu*

since they are living with her husband there." [sic].

(9) It is therefore clear that a native of Puducherry or a person who is born in Puducherry acquires nativity by birth and it is open to him or her to stay away or live away from Puducherry. They will not lose their nativity merely because they are staying away or living away from Puducherry. If they are able to show that their absence is temporary or they have an intention to come back to Puducherry, then they will continue to be the natives of Puducherry. It is this intention which should have been gathered by the Deputy Tahsildar [Revenue], Mahe, when he dealt with the application of the petitioner for Nativity Certificate. Evidently such an exercise has not been carried out.

(10) In the counter affidavit filed, the Deputy Tahsildar [Revenue], Mahe, had referred to certain instructions issued to the authorities wherein it has been stated that Native and Residence Certificates are not interchangeable. The instructions extracted in the said counter affidavit reads as follows:-

"Instructions have been issued to the certificate issuing authorities to issue Nativity Certificate as per the norms prescribed in the G.O.Ms.No.48, dated 12.12.2002.

Of late, it has been noticed by this Department that most of the departments while calling for applications for direct recruits, are mentioning that the applications should be submitted by the applicants along with NATIVITY / RESIDENCE certificates. The terms "Nativity" and "Residence" are entirely different and distinct in connotation. Residence Certificate is being issued to the applicant, mentioning the actual and physical period of residence in the Union Territory of Pondicherry, which can be even be less than five years. Whereas Nativity Certificate is being issued, to those, who, inter-alia, are residing in the Union Territory of Pondicherry continuously for 5 years preceding the date of application. From the above, it is clear that Nativity and Residence Certificates are not interchangeable.

All the Heads of Departments are therefore requested to insist upon production of only Nativity

Certificates and not residence certificates while calling for applications from the applicants for job purposes, if the intention is to restrict the selection to the natives of Union Territory of Pondicherry."

(11) A reading of the above instructions would also amplify the fact that the Nativity Certificate and Residence Certificate are different from each other and a person who is born in Puducherry could still claim Nativity Certificate even if he or she is not residing in Puducherry continuously for a period of five years provided they are able to establish their intention to get back to Puducherry. The above makes it clear that the rejection on the ground of absence from Puducherry temporarily or married outside Puducherry cannot by itself form a ground for rejection of a claim for Nativity Certificate.

(12) Therefore, the order impugned in the writ petition is liable to be quashed and the same is quashed. The writ petition stands allowed. The matter is remitted to the Deputy Tahsildar [Revenue], Mahe, to ascertain the intention of the petitioner and pass appropriate orders based on such intention. Such an exercise shall be completed within a period of two months from the date of receipt of a copy of this

order. It is made clear that the post that has been reserved pursuant to the interim order, shall not be filled up till such time, the enquiry is completed by the Deputy Tahsildar [Revenue], Mahe. No costs. Consequently, connected miscellaneous petition is closed.

06.07.2022

AP
Internet : Yes

To

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R.SUBRAMANIAN, J.

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