



W.A.No.2249 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.12.2022

Coram:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No.2249 of 2022
and
C.M.P.No.17119 of 2022

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Dr.A.S.Radhakrishnan

.. Petitioner

Vs.

1. Principal Secretary to Government,
School Education Department,
Government of Tamil Nadu,
Secretariat, Chennai-600 009.

2. Principal Secretary/Commissioner of
Revenue Administration,
Chepauk, Chennai-600 005.

3. Director of School Education,
College Road, Chennai-600 006.

.. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 26.07.2022 passed in Writ Petition No.16240 of 2020 by the learned Single Judge of this Court.

Writ Petition No.16240 of 2020 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the entire records pertaining to proceedings No.9849/SE1(1) 2019-15, dated 19.08.2020 on the file of the second respondent, quash the same and direct the respondents to effect all consequential service and retirement benefits



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to the petitioner consequential to amending the date of birth in service record of the petitioner from 31.07.1961 to 31.07.1962.

For appellant : Mr.T.V.Badri Narayanan

For respondents : Mr.G.Nanmaran, Addl.G.P.

JUDGMENT

(The Judgment of the Court was delivered by S.Vaidyanathan,J)

The appellant herein is the petitioner before the learned Single Judge. He has filed the present Writ Appeal challenging the order dated 26.07.2022 passed by the Writ Court in W.P.No.16240 of 2020 on the file of this Court.

2. The appellant/writ petitioner filed the above said W.P.No.16240 of 2020 seeking to quash the order dated 19.08.2020 passed by the Principal Secretary/Commissioner of Revenue Administration (second respondent in the Writ Petition) and to correct the Date of Birth (DoB) of the appellant/writ petitioner in the service records and to extend the service benefits in terms of the actual DoB, i.e. 31.07.1962, instead of 31.07.1961 that has been entered in the service records.

3. The appellant submitted that he joined the service in the Tamil Nadu Hindu Religious and Charitable Endowments Department and became an



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Executive Officer in the year 1999. He entered service based on the records available with him and entered the DoB as 31.07.1961. However, finding that the DoB entered in the service records was incorrect, he preferred a Civil Suit in O.S.No.363 of 1997 before the Principal District Court, Madurai, and the said suit was decreed on 01.08.2000, accepting the case of the appellant. However, his efforts to alter the DoB in the service records did not fructify.

4. The appellant made a request to the authorities to correct his DoB and since the same was not accepted, he filed a Writ Petition in W.P.No.34538 of 2005. Pursuant to the order of this Court, dated 26.04.2016, fresh application/representation was filed by him before respondents 2 and 3 herein on 11.05.2016 along with necessary documents. Consequent upon non-consideration of the said representation, he preferred yet another Writ Petition in W.P.No.28565 of 2017, which was allowed on terms as stated therein, against which, the State and the Director of School Education preferred Writ Appeal in W.A.No.2261 of 2019, in which the Division Bench, by judgment dated 31.07.2019, directed the appellant/writ petitioner herein to produce necessary documents as demanded by the authorities for correction of the DoB in the service records.

5. Even though the appellant has produced relevant documents

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before the respondent-authorities, in terms of Section 59(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (Tamil Nadu Act 14 of 2016), the respondent-authorities had not corrected the DoB. In this regard, it is useful to extract Section 59 of the said Act as follows:

"Section 59: Alteration of date of birth: (1) If, at the time of appointment, a candidate claims that his date of birth is different from that entered in his S.S.L.C. or Matriculation Register or school records, he shall make an application to the Commission in case where the appointment is made in consultation with the Commission and in other cases to the appointing authority stating the evidence on which he relies and explaining how the mistake occurred. The application shall be forwarded to the Commissioner of Revenue Administration for report after investigation by an officer not below the rank of a Deputy Collector and, on receipt of the report, the Commission or the appointing authority, as the case may be, shall decide whether the alteration of date of birth may be permitted or the application may be rejected:

Provided that in case of a candidate who was born outside the State of Tamil Nadu, the investigation through the Commissioner of Revenue Administration shall be dispensed with and the Commission or the appointing authority, as the case may be, shall examine and scrutinize the records that may be produced by the candidate and shall decide whether the alteration of date of birth may be permitted or the application may be rejected.

(2) After a person has entered service, an application to alter the date of his birth as entered in the official records shall be entertained only if such an application is made within five years of such entry into service. Such an application shall be made to the authority competent to make an appointment to the post held by the applicant at the time of his application and shall be disposed of in accordance



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with the procedure laid down in sub-section (1).

(3) Any application received after five years after entry into service or any application, which is not supported by entries in Secondary School Leaving Certificate, School, College or University records, birth extract from records of local bodies or military discharge certificates, shall be summarily rejected.

(4) In considering the question of permitting an alteration of the date of birth as entered in the official records even when such entry is proved to have been due to a *bona fide* mistake, the Government or the appointing authority shall take into consideration the circumstance whether the applicant would normally be eligible for appointment to the post at the time of entry into service had his age been correctly stated and what would have been its effect on his service and the service conditions of other officers in the service and may permit the alteration subject to such condition as they or it may deem fit to impose:

Provided that the Commission shall be consulted in the case of an applicant who has been initially recruited through the Commission, if it is proposed to accept his request for alteration of date of birth.

(5) The procedure laid down in sub-section (1) shall be followed in all cases where alteration of date of birth is proposed *suo motu* by the Head of Office on the basis of medical opinion, in the absence of any other authoritative records.

Explanation.—For the purpose of this sub-section, "authoritative records" are the Secondary School Leaving Certificate or University, college, or school records or Discharge Certificate of Army.

(6) The decision of the Commission, the appointing authority or the Government, as the case may be, shall be final.



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6. It is beyond any demur that though at the time of making the request, the Tamil Nadu Act 14 of 2016 was not enacted, a similar provision was in vogue in the Tamil Nadu State and Subordinate Service Rules. Hence, it is clear that the said Rules existed even before the enactment of the Tamil Nadu Act 14 of 2016, when the request for change of DoB was made. At this juncture, it is useful to refer to Rule 49 and also Rule 49-A of the Tamil Nadu State and Subordinate Service Rules, as under:

"Rule 49. Alteration of date of birth --(a) If at the time of appointment, a candidate claims that his date of birth is different from that entered in his S.S.L.C. or Matriculation Register or School records, he shall make an application to the Tamil Nadu Public Service Commission in case where the appointment is made in consultation with the Commission and in other cases to the appointing authority stating the evidence on which he relies and explaining how the mistake occurred. The application shall be forwarded to the Commissioner of Revenue Administration for report after investigation by an officer not below the rank of a Deputy Collector and, on receipt of the report, the Tamil Nadu Public Service Commission or the appointing authority, as the case may be, shall decide whether the alteration of date of birth may be permitted or the application may be rejected:

Provided that in case of a candidate who was born outside the State of Tamil Nadu the investigation through the Commissioner of Revenue Administration shall be dispensed with and the Tamil Nadu Public Service Commission or the appointing authority, as the case may be shall examine and scrutinize the records that may be produced by the candidate and shall decide whether the alteration of date of birth may be permitted or the application



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may be rejected.

(b) After a person has entered service, an application to alter the date of his birth as entered in the official records shall be entertained only if such an application is made within five years of such entry into service. Such an application shall be made to the authority competent to make an appointment to the post held by the applicant at the time of his application and shall be disposed of in accordance with the procedure laid down in sub-rule (a).

(c) Any application received after five years after entry into service or any application, which is not supported by entries in Secondary School Leaving Certificate, School, College or University records, birth extract from records of local bodies or military discharge certificates, shall be summarily rejected.

Proviso— [Omitted in G.O.Ms.No.388, P & AR (Per.S), dt.27-12-95, w.e.f.3-8-94]

(d) In considering the question of permitting an alteration on the date of birth as entered in the official records even when such entry is proved to have been due to a bona fide mistake, the Government or the appointing authority shall take into consideration the circumstance whether the applicant would normally be eligible for appointment to the post at the time of entry into service had his age been correctly stated and what would have been its effect on his service and the service conditions of other officers in the service and may permit the alteration subject to such condition as they or it may deem fit to impose:

Provided that the Tamil Nadu Public Service Commission shall be consulted in the case of an applicant who has been initially recruited through the Tamil Nadu Public Service Commission, if it is proposed to accept his request for alteration of date of birth.

(e) The procedure laid down in sub-rule (a) shall be followed in all cases where alteration of date of birth is proposed *suo motu* by the Head of



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Office on the basis of medical opinion, in the absence of any other authoritative records.

Explanation - For the purpose of this sub-rule "authoritative records" are the secondary school leaving certificate or University, College, or School records or Discharge Certificate of Army.

(f) The decision of the Tamil Nadu Public Service Commission, the appointing authority or the Government, as the case may be, shall be final."

"Rule 49-A. Correction of date of birth: (1) After a person has entered service, if it is found that his date of birth entered in his Service Register is different from that entered in the Secondary School Leaving Certificate or Military Discharge Certificate, which may be due to some clerical error or otherwise wrong entries, application for correction of such clerical error or wrong entries, shall be made to the appointing authority. Such corrections in the Service Register shall be made straightway by the appointing authority. If the date of birth in the Service Register was entered on the basis of the Secondary School Leaving Certificate, correction of clerical error or wrong entries shall be made only with reference to the Secondary School Leaving Certificate and if the date of birth in the Service Register was entered on the basis of the Military Discharge Certificate, correction of clerical error or wrong entries shall be made only with reference to the Military Discharge Certificate. Where the Secondary School Leaving Certificate and the Military discharge certificate contain different dates of birth, the date of birth entered in the secondary School Leaving Certificate shall be accepted. But the date of birth entered in the Military Discharge Certificate shall be accepted in the absence of the Secondary School Leaving Certificate. (Substituted in G.O.Ms.No.770, P & AR (Per.P) dt.12-08-87, w.e.f. 12.02.87).

(2) Where the date of birth of a person, whose qualification is less than the minimum general



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educational qualification, is entered in the Service Register on the basis of the medical certificate or the transfer certificate obtained from the school in which he studied or an affidavit sworn before a Magistrate and if there is any error in the entry so made, the appointing authority may, on application, make necessary correction only with reference to the original record on the basis of which an entry relating to the date of birth is made in the Service Register.

(*Added in G.O.Ms.No.770, P & AR (Per.P), dt. 12-08-1987, w.e.f.12-02-1987.)"

7. Even though the respondents have filed affidavits in various proceedings to the effect that the appellant/writ petitioner had approached the authorities beyond the period of five years, that too, at the fag end of his career, the Court had not accepted the contention of the authorities concerned, and directed the authorities to consider the case of the appellant/writ petitioner afresh, and the objection that such request was made beyond the period of limitation, was rejected.

8. When the above said Rule position is unambiguous and the report of the Revenue Divisional Officer (RDO), dated 21.02.2020 makes it crystal clear that the appellant/writ petitioner's actual DoB is only 31.07.1962 and that the DoB, viz., 31.07.1961 was given only for the purpose of admission in the School, naturally, the DoB in the relevant records have to be mutated.

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9. It is no doubt true that the judgment and decree of the Civil Suit (supra), will have a bearing only on the parties to such proceedings.

10. Upon hearing the learned counsel appearing for the parties, it is evident that, normally, when the School Records stipulate a specific DoB, that alone has got to be considered for the purpose of entry into service, even though the person may have a genuine DoB. When a person has enjoyed the benefits based on the incorrect DoB by entering into School, and also other benefits, later on, he or she cannot come forward to alter the DoB. Unfortunately, the then Rules (Tamil Nadu State and Subordinate Rules) are in practice. Moreover, the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, contemplates alteration of DoB within a period of five years from the date of entry into service.

11. That apart, the findings of the learned Single Judge in the order impugned in favour of the appellant, have not been questioned. The appellant/petitioner is aggrieved only with regard to remand of the matter to the respondent(s), qua, the direction to the Revenue Divisional Officer (RDO) to conduct fresh enquiry to verify as to whether the certificates issued by the Corporation of Madurai, dated 21.05.1996 and 16.08.2019 are genuine or not.

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Though, inasmuch a detailed enquiry was already conducted by the Revenue Divisional Officer, Madurai, vide proceedings in Mu.Mu.No.5995/2019/A, dated 21.02.2020, a copy of the report was not placed before the learned Single Judge, which had resulted in the learned Single Judge remanding the matter for fresh consideration. Of course, there is inconsistency in the ratio laid down by the Courts that alteration of DoB can be entertained only within a period of five years from the date of entry into service. Therefore, in the facts and circumstances of the case on hand, we have to interfere with the impugned order passed by the learned Single Judge insofar as Paragraph 9(iv) is concerned.

12. From the impugned order of the learned Single Judge, it is quite clear that there is no specific observation by the learned Single Judge that the report of the Revenue Divisional Officer, Madurai, in Mu.Mu.No.5995/2019/A, dated 21.02.2020, was placed before him and the submission of the respondent(s) that the claim has been rejected by the R.D.O., has alone been incorporated in the impugned order of the learned Single Judge.

13. Moreover, the respondents ought to have considered the relevant records, especially the report of the RDO, dated 21.02.2020 before passing the impugned order, as the order passed by the respondents, which was under

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challenge before the Writ Court, has got civil consequences. We therefore, find that re-doing the exercise, is uncalled for. Accordingly, we interfere with the impugned order passed by the learned Single Judge, especially sub-clause (iii) to (v) of paragraph 9.

14. We direct the respondents herein to correct the DoB of the petitioner as 31.07.1962 (instead of 31.07.1961), within a period of three months from the date of receipt of a copy of this judgment, or on production of a web-copy of this order, whichever is earlier, and extend the necessary benefits arising out of change of DoB, as directed above, and the monetary benefit suffered by the appellant/writ petitioner, shall also be paid to him within a period of one month thereafter.

15. The Writ Appeal is allowed to the extend indicated above. There shall be no order as to costs. Consequently, the Civil Miscellaneous Petition is closed.

16. Before parting with this judgment, we feel it appropriate to direct the authorities concerned to strictly follow the directions contained in Writ Appeal No.2261 of 2019 (judgment dated 31.07.2019) of a Division Bench of this Court (paragraphs 32 to 35 therein).

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17. Now-a-days, almost all persons have two DoBs., and requests for alteration of DoB after joining Government service, are mushrooming on the very same ground that parents had furnished the wrong DoB at the time of School admission during childhood. Though there is no much harm in having two DoBs., the actual DoB must be disclosed at least for marriage purposes, so as to avoid difference of opinion/suppression of facts to the better-half in future.

18. We would also like to observe that the DoB entered in Corporation/Municipality records, may also be correct, but the DoB given to the School alone has to be taken into account for schooling, employment, etc. If the alteration of DoB is considered suitably based on records found in Corporation/Municipality and if it is later found that upon consideration, the person seeking such alteration of DoB, was not eligible to be admitted in the School, the entire qualification acquired by the person seeking correction of DoB, would be non-est in the eye of law and he/she can also be removed from service without giving any terminal benefits.

19. At this juncture, it is apposite to refer to the decision of the Supreme Court, reported in MANU/SC/0680/2021 = 2021 SCC Online SC 767 (Karnataka Rural Infrastructure Vs. T.P.Nataraja). After referring to the earlier

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decisions of the Apex Court, reported in: (A) 1994 Supp (1)SCC 155 (Home Department Vs. R.Kirubakaran), (B) 2011 (9) SCC 664 (State of M.P. Vs. Premlal Shrivasa), (C) 2016 (15) SCC 781 (Life Insurance Corporation of India and others Vs. R.Basavaraju) and (D) 2020 (3) SCC 411 (Bharat Coking Coal Limited and others Vs. Shyam Kishore Singh), it was held in paragraph 10 as follows:

"10. Considering the aforesaid decisions of this Court the law on change of date of birth can be summarised as under:

(i) application for change of date of birth can only be as per the relevant provisions/regulations applicable;

(ii) even if there is cogent evidence, the same cannot be claimed as a matter of right;

(iii) application can be rejected on the ground of delay and laches also more particularly when it is made at the fag end of service and/or when the employee is about to retire on attaining the age of superannuation".

20. In the decision of the Apex Court reported in MANU/SC/0680/2021 (supra), the decision in the case of State of M.P. and others Vs. Premlal Shrivasa (supra) was referred to and in paragraph 9.2 therein, it was observed by the Apex Court, relevant portion of which is extracted below:

"9.2. In the case of State of M.P. Vs. Premlal Shrivasa (supra) in paragraphs 8 and 12, it is observed and held as under:

"8. It needs to be emphasised that in matters involving correction of date of birth



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of a government servant, particularly on the eve of his superannuation or at the fag end of his career, the court or the tribunal has to be circumspect, cautious and careful while issuing direction for correction of date of birth, recorded in the service book at the time of entry into any government service. Unless the court or the tribunal is fully satisfied on the basis of the irrefutable proof relating to his date of birth and that such a claim is made in accordance with the procedure prescribed or as per the consistent procedure adopted by the department concerned, as the case may be, and a real injustice been caused to the person concerned, the court or the tribunal should be loath to issue a direction for correction of the service book. 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



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those who sleep over their rights (see -- Union
of India Vs. Harnam Singh (1993 (2) SCC 162 =
1993 SCC (L & S) 375).

....."

(S.V.N., J) (M.S.Q., J)

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Index: Yes/no

Speaking Order: Yes/no

CS

To

1. Principal Secretary to Government,
School Education Department,
Government of Tamil Nadu,
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2. Principal Secretary/Commissioner of
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