



W.A.No.2286 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2022

CORAM

The Hon'ble Mr. Justice **PARESH UPADHYAY**
and
The Hon'ble Mr. Justice **D.BHARATHA CHAKRAVARTHY**

W.A.No.2286 of 2022

A.Kalpanadevi

.. Appellant

vs

1.The Director of School Education,
Chennai – 6.

2.The District Educational Officer,
Pollachi.

3.The Principal,
Municipal Girls Higher Secondary School,
Kottur Road, Pollachi – 642 001
Coimbatore District.

.. Respondents

Appeal filed under Clause 15 of Letters Patent against the order
dated 18.07.2022 made in W.P. No.2870 of 2015.

For Appellant : Mr.N.Karthikeyan

For Respondents : Mr.M.Rajendran,
Additional Government Pleader



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JUDGMENT

(Delivered by D.BHARATHA CHAKRAVARTHY.,J)

1. The subject matter of this appeal pertains to alteration of date of birth of the Appellant/Writ petitioner in the service records. This writ appeal is directed against the order dated 18.07.2022 passed in W.P. No.2870 of 2015 in and by which the prayer of the writ petitioner was rejected by the learned Single Judge. The writ petition was the second round of litigation.

2. The writ petitioner filed W.P.No.3172 of 2013 in which the respondent authorities were directed to consider the representation of the writ petitioner and pass orders. Subsequently, by the order impugned in the present writ petition (W.P.No.2870 of 2015) dated 21.08.2014, the respondents rejected the representation. The prayer in the writ petition is to alter the date of birth of the writ petitioner from 11.04.1955 to 02.04.1959. The learned Single Judge, after considering the impugned order, has rejected the writ petition on the following grounds. It is relevant to extract paragraphs 6 and 7 of the order dated 18.07.2022:-

"6. Public servants seeking alteration of



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date of birth have to submit their applications along with the relevant records within a period of five years from the date of appointment. Any application received beyond the period of five years can be rejected summarily by the competent authorities.

7. In the present case, the petitioner though instituted a civil suit in the year 1982, she has not taken steps to alter the date of birth during the relevant point of time. She has submitted his application beyond the period contemplated under the provisions of the service rules. That apart, the petitioner accepted the date of birth entered in the school records for several years as far as the department is concerned and during the fag end of her retirement, she has approached the court of law. Under these circumstances, this court cannot consider the relief as such sought for in the present writ petition."



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3. Therefore, it can be seen that only ground on which the prayer of the writ petitioner was rejected is that the employees are mandated to make an application within a period of five years and in the instant case even though the petitioner has filed civil suit in the year 1982 she has not taken steps to alter the date of birth at the relevant point of time.

4. The finding is contrary to the material records. The writ petitioner entered into service with effect from 08.11.1982. Thereafter, the petitioner filed O.S.No.297 of 1982 to alter her date of birth in which the Director of School Education is also shown as the defendant. Thereafter, he made an application to alter the date of birth on 30.09.1987 which is within the period of five years as contemplated under the Rules. On the said application, an order was passed by the Special Commissioner and Commissioner of Revenue Administration on 09.11.1989 detailing that when the incumbent has filed civil suit by showing the Directorate of School Education itself as the defendant and when the defendants have not appealed against the judgment and decree of the Civil Court, he does not have jurisdiction to negative the request and, therefore, the Court orders may be complied with by the appropriate authorities.



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5. Thereafter, once again, the Special Commissioner and Commissioner of Commercial Taxes has passed an order on 30.12.1989 to the effect that the writ petitioner may be directed to approach the Director of School Education to make alteration of date of birth in the SSLC Book by implementing the order of the Court in O.S.No.297 of 1982. This is how the journey of the writ petitioner started and thereafter the writ petitioner has been continuously pursuing the matter.

6. In the year 1988, the Director of School Education passed an order stating that unless there is a specific decree of the Civil Court to correct SSLC Book, they will not correct SSLC Book and therefore returned the request of the writ petitioner. Thereafter, again the writ petitioner made a representation bringing to the knowledge of the authorities that she has got an order of the Civil Court and inspite of her applying at the earliest point of time, she has been made to run from pillar to post by passing such orders. Again on 17.01.2013, the District Educational Officer, Pollachi passed an order inviting the remarks of the Headmaster in three copies and requesting for the other documents of the writ petitioner so that the request may be carried out. Even thereafter, no orders were passed and therefore the



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writ petitioner filed earlier writ petition in which this Court directed to consider the representation of the writ petitioner and pass orders.

Thereupon, the order impugned in the writ petition was passed stating that if the correction is carried out, it would amount to the writ petitioner completing SSLC at the age of 14 years and therefore such a correction cannot be made. Challenging the said order, the writ petitioner filed the present writ petition.

7. It can be seen that the writ petitioner's request has been rejected by the Learned Single Judge only on the ground that she did not take any steps within the period of five years as per the Rules. For all the facts stated above such a finding is erroneous. There are materials on record and even in the impugned order to show that the writ petitioner has been taking steps from the year 1987 itself and therefore the finding of the learned single Judge that the request was not made within the period of five years and at the relevant point of time is contrary to the materials on record.

8. When the decree of the Civil Court was passed by showing the appropriate authorities as the defendants and this decree having been allowed to become final now belatedly, the respondents



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cannot contend that the SSLC Book cannot be corrected because the writ petitioner has not attained 15 years of age at this belated point of time. Therefore, when the earliest point of time i.e. by order dated 09.11.1989 when the Special Commissioner has indicated that the order to be complied with unless an appeal is preferred from the order of the Civil Court, now belatedly the respondents cannot be permitted to turn around and reject the prayer. The factual matrix of such a contention also is disputed by the Learned Counsel for the Appellant. Be that as it may, it was for the respondents at that point of time to have challenged the decree by carrying it on appeal in the manner known to law. In that view of the matter, the order of the learned Single Judge requires interference.

9. In the result, the following order is passed:-

(i) The writ appeal in W.A.No.2286 of 2022 is allowed.

(ii) The order of learned single Judge dated 18.07.2022 in W.P.No.2870 of 2015 is set aside.

(iii) The writ petition filed by the writ petitioner in W.P. No.2870 of 2015 stands allowed.

(iv) The respondents are directed to carry out correction in the date of birth of the petitioner as 02.04.1959 and accordingly calculate



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the notional date of retirement. The retiral benefits and revised pensionary benefits shall be granted to the writ petitioner.

(v) No costs.

(P.U., J) (D.B.C., J)
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To

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**PARESH UPADHYAY, J.
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