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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON :: 20.04.2022

ORDERS PRONOUNCED ON :: 28.04.2022

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P.NO. 25783 OF 2021

WMP.NOS. 27238, 27240 AND 27243 OF 2021

V.Rajendran

.. Petitioner/
Petitioner

Vs

1. The State of Tamil Nadu,
rep. by its Principal Secretary to Government,
Higher Education Department,
Secretariat, Fort St.George,
Chennai - 600009.
2. The Director of Collegiate Education,
DPI Campus, College Road,
Chennai-600006.
3. The Commissioner,
Directorate of School Education,
DPI Campus, College Road,
Chennai-600006.
4. The Director of Government of Examinations,
DPI Campus, College Road,
Chennai-600006.

..Respondents

Prayer :

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the communication issued by the 4th respondent in Na.Ka.No.02727/P5(1)/2019, dated 11.12.2019 and to quash the same and consequently directing the respondents to correct the date of birth in SSLC mark statement as 08.05.1962 as per the report/recommendation forwarded by the 3rd respondent Director of School Education vide communication in



Na.Ka.No.080141/M/E3/2018 dated 10.09.2019, with all consequential and other attendant service benefits and to pass such further or other orders.

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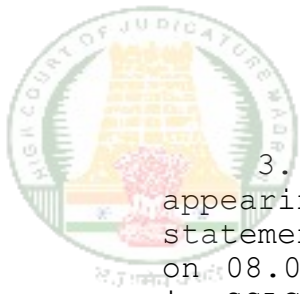
For Petitioner : Mr.G.Sankaran

For Respondents : Mr.M.Bindran, AGP

O R D E R

The case of the petitioner is that the petitioner was born on 08.05.1962. The petitioner had studied 1 to 5 standard in Elementary School, Perumalpet, Tharangambadi Taluk from the year 1965 to 1970 and in the school records the petitioners date of birth was correctly entered as 08.05.1962. Subsequently, the petitioner joined 6th standard in Tharangambadi High School in the year 1970. In the admission register, his date of birth was wrongly entered as 01.03.1958 instead of 08.05.1962, however, based on the representation made by the petitioner's father, the petitioner's date of birth was corrected. On completion of 11th standard (old SSLC) in the year 1976, he was issued with Transfer Certificate and SSLC Book with correct date of birth I.e as 08.05.1962. Whereas, the school authorities while forwarding details to the Directorate of Government Examination for old SSLC Board Exams, wrongly mentioned the petitioner's date of birth as 01.03.1958 instead of 08.05.1962 contrary to the records, hence the same was printed in the SSLC mark sheet. Based on the correct date of birth mentioned in the Transfer certificate and SSLC Book, the petitioner has completed his studies from PUC to PhD and got appointed as Assistant Professor on temporary basis Collegiate Education in the year 1988 and his date of birth was also entered in his Service Register (SR) as 08.05.1962 based on the SSLC Book.

2. Suddenly the petitioner was issued with a charge memo dated 23.11.2017 on the ground that the petitioner has secured appointment as Assistant Professor by misquoting his date of birth as 08.05.1962 and was placed under suspension. Though the 3rd respondent/Director of School Education has forwarded a report dated 10.09.2019 stating that all the records have been carefully verified and recommended for correction to the date of birth in SSLC mark statement, the 4th respondent, without considering the same, has passed the impugned order dated 11.12.2019, rejecting the claim made by the petitioner. Challenging the same, the present writ petition is filed.



3. On the other hand, the learned Special Government Pleader appearing for the respondent has submitted that as per the statement of the learned counsel for the petitioner, he was born on 08.05.1962, but the date of birth has been wrongly recorded in SSLC mark sheet as 01.03.1958. According to Rule VI (2) of the SSLC scheme, the minimum age to appear in the 10th Board exam is 15 years on or before the first day of the month in which the examination is to be held. If the petitioner's date of birth is supposed to be 08.05.1962, he would not have attained the minimum age of 15 years to appear for the March 1976 SSLC Board exam. Further, as per the statement of the petitioner, he joined 6th standard in Tharangambadi High School in the year 1970. If the date of birth of the petitioner is taken into account as 08.05.1962, the petitioner had joined in 6th standard at the age of 8, which is not possible.

4. The learned Special Government Pleader has relied upon the judgment of this Court made in W.P.No.11792 of 2004 dated 11.07.2017 and subsequent letter of the Government dated 18.07.2018, communicating the directions of this Court that an employee seeking alteration of date of birth is eligible to take up SSLC examination based on his/her correct date of birth. In view of the above, the grounds raised by the learned counsel for the petitioner claiming his date of birth contrary to records cannot be considered and the impugned order passed by the 4th respondent is valid and accordingly, the writ petition is liable to be dismissed.

5. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents and perused the materials available on record.

6. Admittedly, the petitioner was placed under suspension by the 1st respondent vide proceedings dated 10.11.2017. Subsequently, a charge memo dated 23.11.2017 was issued on the ground that the petitioner has secured appointment as Assistant Professor by misquoting his date of birth as 08.05.1962 instead of 01.03.1958 based on which he continued to work in the post of Assistant Professor even after the date of retirement on 29.02.2016 as per the date of birth 01.03.1958 and completed more than 1 year and 8 months services and drawn salary from the department and caused loss to the Government.

7. On perusal of school records relating to standards 1 to 5 and the Transfer Certificate issued for standards 6 to 10 (Old SSLC) as well as SSLC Book and all the educational qualification certificates till Phd., reveal the date of birth of the petitioner as 08.05.1962. Further in the Service Register of the petitioner also entered the same date of birth i.e 08.05.1962.



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8. The main contention raised by the learned Additional Government Pleader is that as per the date of birth claimed by the petitioner i.e 08.05.1962, he could not appear for the SSLC Board examination, which requires the age of the students as 15 years.

9. It is seen from the records that the writ petitioner had obtained necessary permission from the authorities concerned to appear for the said examination. Based on that the 3rd respondent /Director of School Education dated 10.09.2019 addressed to the 4th respondent/Director of Government Examination that the 3rd respondent has verified all the school records and after due inspection, found that the date of birth was correctly entered in all the school records except the entry made in SSLC mark statement. For which the petitioner's father has earlier made representation to the school authorities to make necessary correction in the date of birth and in the subsequent correspondence it was accepted that the school authorities viz., Tharangamabdi School has made wrong entry in SSLC mark statement while forwarding the particulars to the 3rd respondent.

10. Therefore, the impugned rejection order passed by the 4th respondent, rejecting the recommendation of the 3rd respondent to make corrections in the date of birth as 08.05.1962 in the SSLC mark statement stating reason that no records have been produced to substantiate the date of birth of the petitioner as 08.05.1962 cannot be accepted and the same is liable to be quashed. Further, in view of G.O.Ms. No. 719, Education Department, dated 20.04.1976, the petitioner is entitled for correction of date of birth in the SSLC mark statement.

11. At this juncture, it is useful to rely upon the judgment of the Hon'ble Supreme Court in the case Shankar Lal Vs. Hindustan Copper Ltd., & Others, wherein the Hon'ble Supreme Court has held that the employers cannot dispute employee's date of birth at the fag end of their services. The relevant paragraphs are extracted as follows;

" 18. The employer has taken a stand that the date of birth recorded of the appellant in the service book was an act by mistake. This is a weak explanation in our opinion. Several subsequent steps were taken by the employer in relation to the appellant's employment on the basis of the entry in his service book. The employer are the custodian of these records. They acted all along on the basis of the service entries till the appellant took VRS. It has been pleaded by the appellant that at the time of his appointment, the office of the respondent company entered in all their records his date of birth as



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21st September 1949. In the light of these facts, we are not inclined to accept the version of the employer that service book recordal was a mistake. The employer, a public sector unit in this case, was expected to act with a certain element of responsibility in maintaining the service records of their workmen and ensure that there is uniformity in particulars concerning individual employees. There is no explanation as to how this mistake occurred and how pay slips continued to be issued carrying the mistaken date of birth for such a long time. The High Court in our view ought not to have had accepted "mistake" as the cause for different entries in different documents.

19. The other point on which argument has been advanced on behalf of the employer is on the aspect of delay on the appellant's part in questioning the mistake in the Form "B". It has been urged by the respondents' counsel that they had extended the sum as per the VRS package computed on the basis of 21st September 1945 as his date of birth and complaint on that count was raised by the appellant after receiving such benefits. It is their case that the anomaly was discovered sometime in July August 2002 and the appellant was asked to appear before a higher authority, which he did on 16th October 2002. The note sheet of the appellant's meeting with the Assistant General Manager on 16th October 2002 has been annexed to the respondent's counter affidavit marked as "R1". The note sheet records that the appellant had refused to put his signature thereon. Such refusal is not of much significance so far as adjudication of the subject dispute is concerned. Fact remains that this note sheet appears to be the first document by which the employer had alerted the appellant of their decision to rely on Form "B" entry for computing his age.

20. The said document came into existence after the appellant was released from his service on 3rd October 2002. No document of earlier origin in this regard has been brought to our notice in course of hearing of this appeal. The appellant complained against such decision on 26th October 2002. Thus, the process of fixing of the appellant's date of birth had continued beyond the date on which he was released from his service.

21. We do not think the appellant's complaint over



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the dispute was belated so as to non suit him on this count alone. VRS benefit is an entitlement and assumes the character of property to the employee concerned once his application for VRS is accepted. It is the right of a person under Article 300A of the Constitution of India to have the VRS benefit to be given on accurate assessment thereof, the employer here being a public sector unit. If at the time of quantifying the VRS benefit after accepting an employee's application for voluntary retirement, the employer take any step that would reduce such benefit in monetary terms, such step shall have to be taken under the authority of law. We find the action of the employer lacking in authority of law in this case on two counts. First, it fails for not adhering to the principles of natural justice. The decision not to follow the service book records was taken without giving an opportunity of hearing to the appellant. The opportunity of hearing of the appellant also accrued because the employer themselves had proceeded on the basis that the later date i.e., 21st September 1949 was the birth date of the appellant and this was a long established position. Moreover, since in the own records of the employer two dates were shown, under normal circumstances it would have been incumbent on their part to undertake an exercise on application of mind to determine in which of these two records the mistake had crept in. That process would also have had to involve participation of the appellant, which would have been compatible with the principles of natural justice. There are several authorities in which this Court has deprecated the practice on the part of the employees at the fag end of their career to dispute the records pertaining to their dates of birth that would have the effect of extension of the length of their service. We are not referring to those authorities in this judgment as the ratio laid down on that count by this Court is not relevant for adjudication of this appeal. The very reasoning on which an employee is not permitted to raise age correction plea at the fag end of his service to extend his tenure should also apply to the employer as well. It is the employer here who had proceeded on the basis of age of the appellant reflected in his service book during the latter's service tenure and they ought not to be permitted to fall back on the Form "B" which would curtail the VRS benefit of the appellant.

22. The principle of estoppel cannot be invoked in



23. In these circumstances, we are of the opinion that the Division Bench as also the Single Judge of the High Court did not appreciate the materials available in their proper perspective. We do not think that the view taken by the Division Bench was a possible view. Sustaining such view would result in depriving the appellant of his legitimate benefits under the applicable Voluntary Retirement Scheme. The materials relied upon by the appellant were ignored altogether. We thus set aside the judgment of the Division Bench. As a consequence, the judgment of the Single Judge also would stand set aside. The rejection order dated 13th October 2008 of the competent authority shall stand quashed. The respondent no.1 proceeded in the case of the appellant in an erroneous manner in treating the appellant's date of birth to be 21st September 1945. We accordingly direct the respondents to extend the benefits of VRS to the appellant treating his date of birth as 21st September 1949. Such benefits shall be extended to him within a period of four months, upon deducting therefrom the sum already paid to him. The differential amount shall carry simple interest at the rate of seven percent (7%) per annum to be computed from 3rd October 2002, being the date on which he was released from service, till the date of actual payment to him in terms of this judgment."

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



respondent cannot dispute the date of birth of the petitioner and cannot proceed with the charge memo.

13. In view of the foregoing discussions, undisputedly, the 3rd respondent after detailed verification of all the records relating to the petitioner's date of birth, has confirmed that the petitioner's date of birth was entered correctly as 08.05.1962 except in the SSLC mark statement and the said mistake was also on the part of the school authorities as admitted by the school authorities by representation dated 03.05.2019 forwarded to the 4th respondent. Therefore, it is clear that the petitioner has not committed any mistake or misappropriation to claim benefit from the respondents by way of altering his date of birth. Further it is clear from the records that the petitioner's father has also taken steps at the earlier stage to correct the date of birth of the petitioner in the said certificate.

14. Therefore, considering the facts and circumstances of the case and in the light of the decision of the Hon'ble Supreme Court cited supra, the impugned rejection order passed by the 4th respondent is liable to be quashed. Accordingly, the following order is passed;

- i. Impugned order dated 11.12.2019 passed by the 4th respondent is quashed.
- ii. Consequently, 4th respondent is directed to correct the date of birth in the petitioners' SSLC mark statement as 08.05.1962 taking note of the Government Orders issued in G.O.Ms. No. 719, Education Department, dated 20.04.1976.
- iii. As far as Charge Memo is concerned, since the said charge memo came to be issued disputing the date of birth of the petitioner, which is under challenge in the writ petition and decided on merits, it is for the petitioner to approach the authorities concerned in the light of the decision made in the present writ petition. Upon receipt of the same, the 1st & 2nd respondents shall pass appropriate orders as expeditiously as possible taking note of the observations made in the present writ petition and the Government Orders in G.O.Ms. No. 719, Education Department, dated 20.04.1976 and communicate the same to the petitioner.



15. In fine, the Writ Petition is allowed to the extent above. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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To

1. The State of Tamil Nadu,
rep. by its Principal Secretary to Government,
Higher Education Department,
Secretariat, Fort St.George,
Chennai - 600009.
2. The Director of Collegiate Education,
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4. The Director of Government of Examinations,
DPI Campus, College Road,
Chennai-600006.

+1cc to Mr.G.Sankaran, Advocate, S.R.No.29878
+1cc to the Government Pleader, S.R.No.30642

W.P.No. 25783 of 2021
and
WMP.Nos. 27238, 27240
and 27243 of 2021

SR(CO)
PM/27/05/2022