



W.A.No.259 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2022

CORAM

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

W.A.No.259 of 2022

M.Ganesan

.. Appellant

vs

1.Tamilnadu Generation and Distribution Corporation Ltd.,
Rep. By its Chairman cum Managing Director,
New No.144, Anna Salai,
Chennai – 2.

2.The Chief Engineer (Personnel)
Tamilnadu Generation and Distribution Corporation Ltd.,
New No.144, Anna Salai,
Chennai – 2.

3.The Superintending Engineer,
Mettur Electricity Distribution Circle,
Tamilnadu Generation and Distribution Corporation Ltd.,
Mettur Dam – 1. .. Respondents

Appeal filed under Clause 15 of Letters Patent against the
order dated 25.08.2022 made in W.P.No.17856 of 2013.

For Appellant : Mr.J.Ravikumar
For Respondents : Mr.P.Subramanian



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JUDGMENT

(Delivered by D.BHARATHA CHAKRAVARTHY.,J)

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1. This appeal is directed against the order of learned Single Judge dated 25.08.2020 in W.P.No.17856 of 2013 in and by which the writ petition filed by the petitioner challenging the order dated 04.05.2011 passed by the third respondent in refusing the writ petitioner's request for altering the date of birth was dismissed.

2. The writ petitioner joined the services of the respondent Corporation on 15.12.2000. On 17.08.2005, he submitted an application to alter his date of birth from 17.06.1973 to 12.04.1975. It is the case of the writ petitioner that he was born in a Government hospital at Kallakurichi and the birth of the petitioner was registered before the authorities and that he is having the birth certificate. However, the date of birth was erroneously entered in the school records which was recorded in the service record also. Along with the birth certificate, the writ petitioner had also produced other requisite documents i.e., proof of joining the service, particulars of siblings, school certificates, and requisite affidavits etc.



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2.1 The said application was considered by the respondents and by an order dated 28.12.2005, they directed the writ petitioner that unless he obtains the Civil Court decree so as to include his name in the birth certificate, they will not be in a position to comply with the said request. It was specifically directed that the writ petitioner can re-present his application after obtaining Civil Court decree.

2.2 Pursuant to the said direction, the writ petitioner filed O.S.No.885 of 2005 on the file of the Principal District Munsif Court, Kallakurichi and by decree dated 30.11.2007, the declaration sought for by the writ petitioner was decreed. Thereafter, the writ petitioner submitted the application before the respondents on 30.03.2009. In response to the said application, by their communication dated 11.08.2009, additional particulars were called for. By his representation dated 17.11.2009, the writ petitioner submitted those additional particulars and once again the application was submitted on 24.12.2010. Thereafter, the order impugned in the writ petition dated 04.05.2011 was passed by the respondents in which it was stated that the request of the writ petitioner for change



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of date of birth is '**not acceptable**'. Except for the said words, no other reason is mentioned in the impugned order. Challenging the said order, the present writ petition in W.P.No.17856 of 2013 is filed by the writ petitioner.

2.3 Learned Single Judge, after considering the matter, rejected the prayer of the writ petitioner on two grounds. The learned Single Judge held that even though the parents of the writ petitioner has wrongly given the date of birth at the time of entering into the school, the writ petitioner had thereafter even done his Masters degree and therefore he can not be permitted to request for correction presently as he had not done anything before. The second ground for rejection is that, even though the writ petitioner had five years time, he submitted his application only at the fag end of fifth year and therefore there is a delay.

3. We have heard Mr.J.Ravikumar, learned advocate for the appellant and Mr.P.Subramanian, learned advocate for the respondents.



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4. Learned advocate appearing on behalf of the appellant would point out that firstly the application was made well within the time limit of five years as prescribed by the Rules. The Rules permitted correction of date of birth if the original date of birth entered into service register is erroneous. In this case, the writ petitioner was born only on 12.04.1975 which is duly reflected in the date of birth certificate. The particulars of the birth of the elder sister and other particulars would clearly adumbrate that there can be no doubt whatsoever regarding the date of birth of the writ petitioner. There is no other doubt as to the birth record.

5. The initial direction by the respondents was that the name of the writ petitioner was not reflected in the birth certificate and therefore it is only the respondents who insisted that the writ petitioner should file civil suit and get his name incorporated in the date of birth certificate. Accordingly, when the writ petitioner complied with the said request. Now belatedly the prayer of the writ petitioner was rejected by the impugned order. The impugned order did not contain any reason except the words 'not acceptable'.



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Therefore, the order of learned Single Judge is erroneous in law and should be interfered with by this Court.

6. Per contra, learned counsel appearing for the respondents would submit that in this case, the Rule is that the writ petitioner should submit his application within five years. That does not mean that the writ petitioner can submit an incomplete application and thereafter claim the benefit that his application was within time. If the declaration of the Civil Court was necessary for the purpose of the submission of the application, then the writ petitioner ought to have obtained Civil Court decree also within the five years time and the application complete in all respects should have been submitted within five years time. When the writ petitioner has not done so, it should be deemed that the writ petitioner's application is not within time and therefore his application has been rightly rejected by the respondents.

7. We have considered the rival submissions made on behalf of either side and perused the materials record of the case.



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8. In this case, on perusal of records, the fact that the writ petitioner was born on 12.04.1975 is borne out by the birth certificate and no doubt whatsoever is even remotely raised by the respondents in that regard. If that being so, law requires that the error to be corrected and not perpetrated. However, as per Rules, the application should be made within a period of five years. In this regard, the date of entry into service of the writ petitioner is 15.12.2000 and therefore the five years time expires on 15.12.2005. The writ petitioner has made an application on 17.08.2005 which is well within the period of five years.

9. As per the Rules, it is not a pre-requisite that the writ petitioner should have obtain a Civil Court decree. It was only on the insistence of the respondents, by way of additional material, the writ petitioner was directed to obtain Civil Court decree. Therefore, it can not be said that the writ petitioner submitted an incomplete application. When it was only the insistence of the respondents by way of their communication dated 28.12.2005, that the writ petitioner should obtain the declaration from the civil court and re-present the application, it can not be put against the writ petitioner



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that on the date when he re-presented the application, the same was not within a period of five years. The same was not also the reason mentioned in the impugned order. Therefore, the impugned order being a non-speaking order has to be set aside and the writ petitioner is entitled otherwise for the relief.

10. As far as the reasons mentioned by the learned Single Judge is concerned we are not in agreement with the first reason that when the writ petitioner has pursued upto Masters degree, he could have corrected it earlier and he can not make the request after entering into service. As a matter of fact, if the said reasoning is to be adopted the very Rule framed enabling the Government Servants to correct / alter the date of birth within a period of five years would itself become redundant. Therefore, we do not agree with the said reasoning of the learned Single Judge. The second reason is even though five years time is there, the application is made only at the fag end of the fifth year as prescribed. When the application is made within the period of five years of limitation, there cannot be any laches which can be looked into within the period of limitation. Thus, both the reasons given by learned Single



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Judge are not acceptable and we are of the considered view that
Order of the Learned Single Judge is unsustainable.

11. In the result, we hold that the writ petitioner is entitled for the prayer made by him. Therefore, the following order is passed:-

(i) W.A.No.259 of 2022 is allowed.

(ii) The order of learned Single Judge dated 25.08.2020 passed in W.P.No.17856 of 2013 is set aside.

(iii) Consequently W.P.No.17856 of 2013 is allowed as prayed for.

(iv) However there shall be no order as to costs.
C.M.P.No.1024 of 2021 is closed.

(P.U., J) (D.B.C., J)
19.10.2022

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To

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