IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.18499 of 2016
and W.M.P.No.16192 of 2016

M.R. Kalaiselvi ... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Higher Education Department,
Secretariat, Fort St. George,
Chennai – 600 009.

2.The Director of Collegiate Education,
DPI Campus, College Road,
Chennai – 600 006.

3.The Principal,
Kundavai Naachiar Government Arts College for Women,
Thanjavur – 7.

4.The Commissioner of Revenue Administration,
Chepauk,
Chennai – 600 005. ... 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 impugned proceedings issued by the 2nd respondent in Na.Ka.No.41727/D3/2015 dated 19.05.2016 and to quash the same and consequently direct the respondents to alter the date of birth of the petitioner as 15/07/1960 instead of 15/07/1958 on consideration of birth extract and other documents produced with all consequential and other attendant benefits to continue in service based on the original date of birth (15/07/1960) up till the date of retirement on that basis.

For Petitioner	:	Mr.G. Sankaran, Senior Counsel for Mr.S. Nedunchezhiyan
For Respondents	:	Mr.T. Chezhiyan, Additional Government Pleader

ORDER

The petitioner herein was appointed as a Lecturer in the third respondent/College on 07.12.2007 through G.O.Ms.No.401, Higher Education Department. As per the service records, her date of birth was registered as 15.05.1958. Since the petitioner claimed her date of birth to be as 15.07.1960, she had given an application on 28.10.2011 to the second respondent, seeking for alteration of her date of birth. Based on her application, an inquiry came to be conducted by the Revenue Divisional Officer, Thanjavur and in his detailed inquiry report dated

01.04.2016, he had opined that the petitioner's correct date of birth is 15.07.1960 and not 15.05.1958. The fourth respondent herein, had also passed a consequential order on 12.05.2016, by taking into account the report of the Revenue Divisional Officer and had stated that the alteration is feasible. In view of the inaction on the part of altering the date of birth, she had approached this Court and by an order dated 12.05.2016 passed in W.P.No.17908 of 2016, this Court had directed the respondents to consider her representation in this regard, within a period of one week. In this background, the second respondent herein, had passed the impugned order dated 19.05.2016, by simply stating that the alteration sought for by the petitioner is not feasible. Challenging the same, the present Writ Petition has been filed.

2. The learned senior counsel appearing for the petitioner submitted that under the Educational Rules, alteration of the school records is impermissible and her right to seek for alteration after entering into the Government service, would arise in accordance with Rule 49 of the Tamil Nadu State and Subordinate Services Rules (hereinafter called as 'the Rules'.

3. Per contra, the learned Additional Government Pleader, placed reliance on the report of the fourth respondent herein and submitted that since the petitioner had not taken any steps to alter her date of birth in the school records prior to joining of service and apart from the birth certificate, there are no other records to substantiate that the petitioner was born on 15.07.1960. There is no infirmity in the order of the fourth respondent, as well as the second respondent.

4. I have given careful consideration to the submissions made by the respective counsels.

5. When a Government employee, at the time of appointment, claims his date of birth to be different as entered in the school records, he should make an application to the concerned authority, seeking for alteration of date of birth, within 5 years from his entry into service.

6. Rule 49 of the Tamil Nadu State and Subordinate Services Rules, deals with the procedure for alteration of the date of birth of a Government employee. The relevant portion of the Rule reads as follows:-

"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 cases 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 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."

7. As per the aforesaid Rule, a Government employee is required to make an application seeking for alteration of his date of birth within a period of five years from his date of entry into the service. It is not in dispute that the petitioner's application for alteration of date of birth dated 28.10.2011, was made within 5 years from the petitioner's entry into service. After the application was made, the Revenue Divisional Officer had conducted a detailed inquiry with regard to the petitioner's birth, as well as her siblings. By taking into account that the immediate elder sister of the petitioner was born on 24.06.1957 and the petitioner could not have been born on 15.05.1958, within 10 months and also on the aspect that if the petitioner was born on 15.07.1960, she would have taken her 10th standard examination in the year 1975, had come to the conclusion that the petitioner's original birth was only on 15.07.1960 and not on 15.05.1958. The reasoning adopted by the Revenue Divisional Officer seems to be acceptable to this Court.

8. On the other hand, the fourth respondent herein, had rejected the petitioner's request, as well as the recommendations of the Revenue Divisional Officer on surmises. As per the fourth respondent's report, he had opined that since the petitioner had not taken any initiative to have the date of birth from the school records altered, her request for alteration of date of birth is not feasible. This apart, the fourth respondent had also ventured to compare the ink used in the birth registers and had also quoted that as reason for not accepting the reason for alteration of date of birth. There is no reference to the inquiry conducted by the Revenue Divisional Officer wherein, he had detailed about the impossibility of the petitioner's to have been born on 15.05.1958 since her immediate elder sister was born on 24.06.1957 only, which is about 10 months. Likewise, the fourth respondent had also not referred to the justification given by the Revenue Divisional Officer with regard to the petitioner's possibility of completing her 10th standard examination in the year 1975, by taking into account that she must have been born in the year 1960. As such, the reason adopted by the fourth respondent with regard to the failure on the part of the petitioner, in not taking steps to have the school records altered prior to joining of service is concerned, is baseless.

9. Above all, the fourth respondent's report dated 12.05.2016, is deemed to have been made only on conjectures and surmises and can also be deemed to be a non-speaking order since it does not deal with the detailed report of the Revenue Divisional Officer dated 01.04.2016.

10. Thus, this Court is of the affirmed view that the petitioner's correct date of birth is only 15.07.1960 and not 15.05.1958 and therefore, the respondents ought to have altered the date of birth in her service records, which would have facilitated her to retire from the services on

31.07.2018 instead of 31.05.2016, on completion of 58 years of age.

11. The next consequential issue that may arise for consideration is that, what could be the status of the petitioner for the period between 31.05.2016 to 31.07.2018, since she was not allowed to perform her duties during that period, owing to premature of her superannuation. This issue, is no more *Res-integra* in view of the following decision rendered by this Court in the case of ***'A. Rangaraj Vs. The Director of Local Fund Audit & another'*** passed in ***'WP.No.26813 of 2018'*** dated ***05.01.2023,*** wherein, I had an occasion to deal with this issue by placing reliance on a decision of the Hon'ble Supreme Court. The relevant portion of the order reads as follows:-

> **......** *"7. The learned standing counsel for the second respondent submitted that since the petitioner herein had not physically worked for the period between 31.07.2015 to 31.07.2017, he is not entitled for the arrears of pay on the principle of 'No work No pay'. I am not in agreement with such a finding.*
>
> ***8.*** *As a matter of fact, this aspect has already been dealt with by the Hon'ble Supreme Court in the case* ***'Shobha Ram Raturi Vs. Haryana Vidyut Prasaran***

Nigam Limited' *reported in* ***'(2016) 16 SCC 663',*** *in the following manner:-*

> **....** *"Having given our thoughtful consideration to the controversy, we are satisfied, that after the impugned order of retirement dated 31.12.2002 was set aside, the appellant was entitled to all consequential benefits. The fault lies with the respondents in not having utilised the services of the appellant for the period from 1.1.2003 to 31.12.2005. Had the appellant been allowed to continue in service, he would have readily discharged his duties. Having restrained him from rendering his services with effect from 1.1.2003 to 31.12.2005, the respondent cannot be allowed to press the self serving plea of denying him wages for the period in question, on the plea of the principle of "no work no pay"* **...."**

9. *The aforesaid extract is self-explanatory. Since the alteration of the petitioner's date of birth in the Service Register is illegal and therefore, the premature retirement of the petitioner for no fault of his, would have to be necessarily treated as compulsory wait and by applying the ratio laid down by the Hon'ble Supreme Court in the aforesaid decision that, had the second respondent herein permitted the petitioner to continue the service, he would have discharged his duties and therefore, the principle of 'No work No pay' cannot be applied and therefore, this Court is of the view that the* *petitioner would be entitled for his last drawn pay from 31.07.2015 to 31.07.2017***.....”**

12. Likewise, in the case of ***'J. Ganesan Vs. The Secretary to Government, Backward Classes, Most Backward Classes and Minorities Welfare Department, Chennai & others'*** passed in ***'WP.No.9697 of 2020'*** dated ***28.07.2021***, I had dealt with the conduct of Commissioner of Revenue Administration in deviating from the inquiry report of the Collector and held that such an order cannot be sustained. The relevant portion of the order reads as follows:-

..... *“19. In view of the above observations, I do not find any justification on the part of the Commissioner of Revenue Administration in having deviated from the District Collector's report dated 17.10.1992. The first respondent herein had also mechanically reiterated the objections raised by the Commissioner of Revenue Administration in his report, dated 08.12.1995 and passed the impugned Government Order. Apart from reiterating the discrepancies pointed out by the Commissioner of Revenue Administration, the first respondent had not rendered any other independent findings, in order to either over-rule the recommendations of the District Collector in his report dated 17.10.1992 or to substantiate that the* *petitioner's date of birth was '15.08.1960' and not '15.08.1962. As such, the impugned order passed by the first respondent herein, cannot be sustained*......"

13. The aforesaid extracts are self-explanatory. Since the premature retirement of the petitioner is illegal, the period between 31.05.2016 to 31.07.2018, shall be treated as compulsory wait, by applying the ratio laid down in the aforesaid decisions. As such, the order of the fourth respondent herein, without reference to the detailed inquiry conducted by the Revenue Divisional Officer, cannot be sustained. Consequently, the petitioner would be entitled for all the monetary and service benefits, including pensionary benefits for the period between 31.05.2016 to 31.07.2018.

14. At this juncture, the learned Additional Government Pleader submitted that the petitioner herein, is a member of the Contributory Pension Scheme and that she could not have made the contribution for the period between 31.05.2016 to 31.07.2018. In this background, if the respondents are granted liberty to take the pension contribution from out of the arrears of salary payable to the petitioner for the period between

2016 to 2018, the ends of justice could be secured.

15. In the light of the above findings and observations, there shall be a direction to the respondents, to forthwith pass orders by treating the petitioner's date of birth in her service register as 15.07.1960 instead of 15.05.1958 and notionally retire her from the services on the date of superannuation and thereby, disburse her arrears of salaries for the aforesaid period including revision of the pension. The respondents are at liberty to deduct the pension contribution for the said period between 31.05.2006 to 31.07.2018, from out of the arrears of salary. The orders of disbursement of the arrears shall be made atleast, within a period of four (4) weeks from the date of receipt of a copy of this order.

16. With the above directions, the Writ Petition stands allowed. No costs. Connected miscellaneous petition is closed.

28.02.2023

Speaking Order
Index: Yes
Neutral Citation: Yes
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M.S.RAMESH, J.

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To

1.The Secretary to Government of Tamil Nadu,
Higher Education Department,
Secretariat, Fort St. George,
Chennai – 600 009.

2.The Director of Collegiate Education,
DPI Campus, College Road,
Chennai – 600 006.

3.The Commissioner of Revenue Administration,
Chepauk,
Chennai – 600 005.

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