IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2023

CORAM:

THE HON'BLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.7383 of 2020
and
W.M.P.No.8831 of 2020

R.Murugesan ...Petitioner

Vs.

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

2. The Director,
   Local Fund Audit,
   Directorate of Local Fund Audit,
   Integrated Finance Office Complex,
   Nandanam,
   Chennai.

3. The Deputy Director,
   Local Fund Audit,
   Directorate of Local Fund Audit,
   Integrated Finance Office Complex,
   Nandanam.

4. The Sub-Collector/Revenue Divisional Officer,
Ranipet,
Vellore District. ...Respondents

Prayer: Writ Petition filed Under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, to direct the Director, Local Fund Audit, Directorate of Local Fund Audit, Integrated Finance Office Complex, Nandanam, Chennai the second respondent herein to enter 22.08.1963, the correct of date of birth of the Petitioner in his service records.

For Petitioner : Mr.A.V.Arun

For Respondents : Mr.K.Tamil Vendhen
Government Advocate

ORDER

This writ petition has been filed by the petitioner seeking direction to the Respondent No.2 to enter 22.08.1963, the correct of date of birth of the petitioner in his service records.

2. The case of the petitioner is that he was born on 22.08.1963 at Kadapanthangal Village, Vellore District to his parents late Rajagopal and

Kishtamma. His late father was an illiterate landless agricultural labourer and his mother Kishtamma is also an illiterate homemaker. The petitioner successfully appeared for the SSLC examination on October 1979 and passed the Higher Secondary Examination on April 1982. Subsequent to the completion of his studies, he too joined with his father as an agricultural labourer and continued as such, till the year 2003.

3. The learned counsel appearing for the petitioner would submit that in the year 2003, the petitioner was appointed as a Junior Assistant with the Revenue Department on a consolidated pay of Rs.5000/- per month and in that capacity, he worked at Ponneri Taluk of Tiruvallur District for about 7 years. Thereafter, he cleared Group-IV examination conducted by the TNPSC specially for the staff who were on contractual employment and selected as Junior Assistant. The Director of the Local Fund Audit, the second respondent vide proceedings dated 29.06.2010 appointed the petitioner as a Junior Assistant.

4. The learned counsel for the petitioner would further submit that on completion of five years of service, by the proceedings dated 08.12.2015, the Director of Local Fund Audit, the second respondent herein granted promotion as Assistant Inspector even though 10 years of service have been rendered in the office of the second respondent and discharged his duties to the satisfaction of all his superiors. The petitioner is only person in his family who passed Higher Secondary and entered into the Government Service. Due to illiteracy, while his father got him admitted into school has wrongly mentioned his date of birth as 13.04.1962, instead of the correct date of birth 22.08.1963 and that wrong date of birth viz., 13.04.1962 was entered into SSLC and Higher Secondary Certificates. Subsequent to his appointment as Junior Assistant, he intended to set the records straight and made an application to the Director of Local Fund Audit, the second respondent to enter the correct date of birth in the Service Record. The procedure for alteration of date of birth of a Government Servant is governed by the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and the relevant provisions under Section 59 of the said Act, reads as follows:-

"59. (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 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 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 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. Relinquishment of rights by members Power to deal with certain cases.

(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.

5. The learned counsel for the petitioner would further submit that the second respondent as mentioned in the Act, sent a communication to the first respondent on 23.09.2015 requesting a report for passing necessary orders and the first respondent for conducting an investigation as mandated in the Rules has sent a letter to the fourth respondent on 09.04.2018. The Sub Collector/Revenue Divisional Officer, Ranipet, the fourth respondent conducted a detailed investigation and prepared a report which was sent to the first respondent on 24.09.2019. It is pertinent to point out that the report sent by the fourth respondent had held in categorical terms, the claim of the petitioner as true. A reading of the report reveal that the same was prepared after a thorough investigation. A lot of witnesses who are relevant for ascertaining the truthfulness of the petitioner's claim were enquired and also a thorough perusal of public documents viz., Birth and Death Register with respect to the petitioner's village.

6. The first respondent on receipt of the investigation report has sent a recommendation to the second respondent rejecting the petitioner's claim

merely on the ground that the petitioner would not have joined 1st standard on 13.06.1968 and he had been born on 22.08.1963 as he had not completed 5 years of age. Further, the first respondent has assumed that for joining school, the petitioner's parents have wrongly mentioned the date of birth of the petitioner. Further, the first respondent has extracted a portion of the judgment of this Hon'ble Court has held under the old pattern (till April 1977), the candidate appearing for the SSLC examination should have completed 15 years and under the new pattern (from April 1978), the candidate should have completed 14 years of age on the first day of the month in which the examination is held. If that happens to be the standard, the petitioner who wrote the examination in April 1978, has completed 14 years of age as such, his case is qualified for alteration of date of birth. However, the first respondent recommended for rejection of the request made by the petitioner. Hence, the petitioner has come forward with the present writ petition.

7. The counter affidavit was filed by the first respondent on 14.06.2023. The learned Government Advocate appearing for the respondents 1 to 4 would

submit that the petitioner had submitted his application in the format prescribed on 29.01.2016 for alteration of his date of birth from 13.04.1962 to 22.08.1963. Though, the petitioner has not made his application within a period of 5 years from the date entry into Government Service as required under rule 59(3) of the Tamil Nadu Government Servants (Conditions of Services) Act, 2016, the Revenue Divisional Officer, Ranipet has been requested to send a report after due enquiry and verification of original records as per the rule 59(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016.

8. The learned Government Advocate would further submit that the petitioner name has been inserted in the Original Birth Register only on 09.02.2017. The father of the petitioner had signed the declaration part in the SSLC book wherein, the date of birth is mentioned as 13.04.1962 and acknowledged that no changes will be demanded in future. Further, the petitioner's father was not prohibited to rectify the date of birth of the petitioner given before the School authorities at that time. Further, as per G.O.No.1296, Education Department, dated 16.06.1960, any child seeking admission should

have completed five years of age as on 31st July of admission year. The petitioner was admitted in the 1st standard on 13.06.1968. If the date of birth of the petitioner is presumed as 22.08.1963, he would have completed only 4 years, 11 months and 09 days and would not be eligible for admission into 1st standard. Hence, it has been recommended to the Director of Local Fund Audit to reject the request of the petitioner to alteration of date of birth as 22.08.1963 instead of 13.04.1962.

9. The learned Government Advocate for the respondents would further submit that the application for alteration of date of birth has to be submitted within 5 years from the date of entry into the Government Service as per provision laid down under Section 59(3) of Tamil Nadu Government Servants (Conditions of Services) Act, 2016, the relevant portion of the said act is read as follows;

> *"(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. Relinquishment of rights by members Power to deal with certain cases"

10. In the instant case, the petitioner filed an application after lapse of 13 years that is he has entered Government Service on 2003, but the application was submitted only in the year 2016 for alteration of date of birth cannot be considered.

11. The counter affidavit was also filed by the second respondent on 25.09.2020 and the relevant para has extracted hereunder:-

"With regard to averments made in para 12 of the Affidavit, it is submitted that the second respondent herein cannot alter the date of birth of the petitioner in the service register since the petitioner had not submitted any concrete proof / original documents required for marking necessary entries in his service register. The second respondent has forwarded the application of the petitioner to the first respondent herein as required in Rule 59(1) of Tamil Nadu Government Servants

(Conditions of Service) Act, 2016. The first respondent herein has given detailed report recommending to reject the request of the petitioner. The second respondent cannot act on his own to alter the date of birth of the petitioner in his service register. Therefore, the prayer of the petitioner is ill-conceived and devoid of merits."

12. Heard the learned counsel on either side and perused the materials available on record.

13. **In the case on hand, the petitioner joined Government Service in the year 2003 and applied for alteration of date of birth only in the year 2016, after lapse of 13 years which is admitted fact and not disputed by either of the parties.** According to the provisions laid down under Section 59(3) of the Tamil Nadu Government Servants (Conditions of service) Act, 2016, relevant portion is stated supra, **it is pertinent to note that the petitioner's name was inserted into the original birth register only on 09.02.2017, at that time, the age of the petitioner was 55 years.** As per the office records, the date of birth given in SSLC book was mentioned as

13.04.1962 but the petitioner is claiming the date of birth as 22.08.1963 and requested for alteration of the same **after lapse of 13 years of joining the Government Service, which is in clear violation of the above rules under Section 59 (1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016.** Furthermore, in the letter No.RA.3 (3)/41814/2015 dated 03.03.2020 submitted by the first respondent to the second respondent and the relevant portion is extracted hereunder:-

> *"16. The Head Mistress, Panchayat Union Elementary School, Kadapanthangal in her letter dated Nil has certified that the petitioner has joined 1st standard on 13.06.1968. The petitioner is eligible to join in 1st standard on 13.06.1968, if the date of birth of the petitioner is 13.04.1962. If the date of birth is presumed as 22.08.1963 as claimed by the petitioner, he would have completed only 4 years, 11 months and 09 days and would not be eligible for admission into 1st standard.*
>
> *20. The reason adduced by the petitioner for furnishing his date of birth as 13.04.1962 in the school records by his parents while admission in school is due to their lack of education. The petitioner's father has confirmed the date of birth of the petitioner as 13.04.1962, by signing the declaration part in the*

petitioner's Secondary School Leaving Certificate wherein it is mentioned that the particulars recorded against items 1 to 6 above are correct and that no change will be demanded in future. Hence, the reason adduced by the petitioner to alter his date of birth is not acceptable."

14. In view of the above factual matrix of the case and the discussion, this Court is of the considered view that the relief sought for in this writ petition cannot be granted to the petitioner and it is pertinent to note that the petitioner has entered into the Government Service on 15.07.2003 and the application for alteration of date of birth has been made beyond the prescribed period after entering into the Government Service only on 29.01.2016, which cannot be entertained under the provisions of 59(1) of Tamil Nadu Government Servant (Conditions of Service) Act, 2016.

15. In the result, the writ petition stands dismissed. No Costs. Consequently, connected Writ Miscellaneous Petition is closed.

29.09.2023

Index: Yes/No
Speaking/Non-speaking Order
mac/vca

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J.SATHYA NARAYANA PRASAD, J.

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