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W.P.No.17374 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

WP.No.17374 of 2022 &

WMP.No.16688 of 2022

T.Daisy Rose Light

... Petitioner

Vs

1. The Additional Secretary,
Health & Family Welfare Department,
Secretariat, Fort St. George,
Chennai – 600 009.

2. The Additional Secretary/Commissioner
of Revenue Administration,
Chepauk, Chennai – 600 005.

... Respondents

Prayer:- Writ Petition filed, under the Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent pertaining to the impugned order passed in G.O. (Ms) No. 24 Health - Family Welfare (A.Na. Mu.1/2) Department Dated 12.01.2022 and quash the same and to direct the 1st respondent to correct the date of birth of the petitioner from 02.06.1964 to 09.03.1965 in the service record.



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For Petitioner : Mr.K.Elango

For Respondents : Mr.P.Baladhandayutham
Special Government Pleader

ORDER

Challenging the impugned Order passed in G.O. (Ms) No. 24 Health - Family Welfare (A.Na. Mu.1/2) Department Dated 12.01.2022 by the first respondent rejecting the correction of the date of birth of the petitioner in the service records and to direct the first respondent to correct the date of birth of the petitioner from 02.06.1964 to 09.03.1965 in the service records.

2. It is the case of the petitioner that she was appointed as temporary Typist on 06.12.2007 and on the basis of the entries found in the school records, her date of birth has been mentioned as 02.06.1964. According to the petitioner, her parents were illiterate and they have given wrong date of birth as 02.06.1964 at the time of admitting the petitioner in the school. It is the contention of the petitioner that the original date of birth of the petitioner is 09.03.1965. In fact, the same is



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also reflected in the birth certificate of the year 1965. After realising the mistake, as per Section 49[b] of the Tamilnadu State and Subordinate Rules, she has submitted an application before the first respondent on 03.01.2011 to correct her date of birth in service records as per her original date of birth recorded in the birth certificate. The said application is also filed within a period of five years from the date of her entry into service. It is the further case of the petitioner that petitioner's sisters and brothers date of birth are as follows:

S.No.	Names	Relationship	Date of birth as per school records	Actual date of birth as per B & D register
1.	Pakiyajothi	Sister	05.05.1958	14.09.1957
2.	Daisy Rose Light	Petitioner	02.06.1964	09.03.1965
3.	Thambi Rajan	Brother	01.05.1968	[died]
4.	Merlin Kamala	Sister	30.06.1973	01.10.1972
5.	Moses Jeyasingh	Brother	26.10.1976	26.08.1976

However, now the impugned Order has been passed rejecting her claim.

The impugned Order has been passed mainly on the ground that as there is shortage of few months for appearing for SSLC examination, the claim of the petitioner has been rejected. Further, the respondent has failed to consider the public documents. Hence, challenging the impugned Order,



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present Writ Petition has been filed.

3. In the counter filed by the respondents, it is their contention that RDO has enquired regarding change of date of birth of the petitioner and submitted the following report :

“On verifying the Register of Birth certificates in respect of the petitioner herein and her siblings obtained from the Kottaram Sub Registrar Office, it is seen that first child was born on 14.09.1958 and their father / mothers name have been recorded as Thangamani and Kanmani respectively.

>In the Birth Register it is noted that a child was born on 09.03.1965 and father mothers name were recorded as Thangamani and Arputha Kanmani. But the name of the child has not been entered in the said Register. Further it is noted that number of children born prior to the child is two (2) which is contradictory.

> Sub-Registrar has submitted a report that the birth of third child Thambirajan has not been registered.



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In the Birth Register, date of birth of Merlin Kamala, younger sister of the petitioner herein has been registered as 01.10.1972. But in the School certificate, it is registered as 30.06.1973. Further in the Birth register against the name column, it is registered as 'Light'.

In the Birth register, date of birth of Moses Jeyasingh brother of the petitioner herein has been registered as 26.08.1976. But in the school records, it is recorded as 26.10.1976.

>In the enquiry, petitioner has deposed that birth of her elder sister Pakiya Jothi has not been registered. But in the Birth register of Sub- Registrar, it has been registered as 14.09.1958.

The Additional Chief Secretary/Commissioner of Revenue and Disaster Management has stated as follows :

“It is seen that name of the petitioner's mother has been recorded as Kanmani and Arputha Kanmani.



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In the Xerox copy of Birth register pertaining to the years 1965, the year in which the petitioner is praying for change, it is recorded that there were two children prior to the child born and a girl child is born on 09.03.1965 without any mention about the name of the child. The petitioner in the proforma submitted and in the enquiry has deposed that she is second child, whereas in the Register it has been recorded that two children were born prior to the petitioner herein.

The petitioner herein has been admitted in the Leepuram Primary school on 09.06.1969 and there her date of birth has been registered as 02.06.1964. As per [G.O.No. 1296](#), School Education Department, dated 16.06.1960, for admission to class 1, a child should complete 5 years of age as on July 31" But on 09.03.1965, the date on which the petitioner herein is claiming alteration, her age on her class I admission is 4 years 4 months and 22 days. Hence it is seen that the petitioner



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herein does not fulfil the age limit prescribed in the above said Government Order, for class admission.

The Additional Chief Secretary Commissioner of Revenue Administration recommended that based on the aforesaid facts, the request of alteration of date of birth of the petitioner herein may be rejected.”

Accordingly, the first respondent has examined Commissioner of Revenue Administration and issued a detailed Order in G.O.Ms.No.24. It is their further contention that Additional Chief Commissioner of Revenue Administration has also given remarks. According to it, the originally date of birth was registered as one unnamed female child born to N.Thangamani and Arputhakanmani on 09.03.1965. However, in the column in 'how many children were born before this child' it is mentioned as '2' which indicates that the order of birth is '3'. However, the petitioner has claimed that she is a second child born on 09.03.1965. Hence, the claim of the petitioner is contrary. Hence, opposed the Writ Petition.



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4. The learned counsel appearing for the petitioner would submit that the respondent simply rejected the claim of the petitioner citing insignificant discrepancies found in the birth register. Whereas, the evidence of the parties clearly show that the petitioner is the second child born to their parents. In fact the same has been reflected in the birth register of the year 1965. According to the petitioner, the entries found in the birth register are relevant and admissible. Besides there is statutory presumption attached to it, which has not been considered. Hence, the Order impugned cannot be sustained in the eye of law.

5. The learned Additional Government Pleader appearing for the respondents would submit that there are inconsistencies in the name as well as date of birth. However, the petitioner has completed four years and few months before joining school. This aspect has been clearly considered by the Revenue Divisional Officer and the first respondent, based on the enquiry report filed by the Revenue Divisional officer as well as the remarks submitted by the Commissioner of Land Revenue has passed the impugned Order. Hence, submitted that the impugned



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Order does not require any interference.

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6. Perused entire materials available on record. It is not in dispute that the petitioner was appointed on 06.12.2007 as a temporary Typist. As per school records, her date of birth was recorded as 02.06.1964. The petitioner has submitted an application within 5 years after her entry into service. These facts have not been disputed. As per the birth register, the date of birth of the petitioner is 09.03.1965. It is relevant to extract Section 59 of the Tamil Nadu Government Servants [Conditions of Service] Act which 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



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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



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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.

(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



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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.”

7. A perusal of the above Section makes it clear that any entry in the school which is a bonafide mistake, such entry can be corrected. The only caveat is that the application for correction of date of birth should be filed within a period of 5 years. The petitioner relied upon the birth certificate of the year 1965. The same indicate that a female child was born to N.Thangamani and Arputhakanmani on 09.03.1965. The same



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has been registered on 13.03.1965. Though a copy of the birth certificate has been obtained in the year 2010, the entries in the birth certificate makes it clear that the entry in the birth register has been made as early as on 13.03.1965, of course without the name of the child.

8. It is relevant to note that normally whenever a child is born, entry will be made only with regard to the gender of the child with the name of the parents and the name of the child will not be made. The particulars to whom the child is born is made in the original entry. Section 14 of Registration Birth and Death Act 1969, makes it clear that where the birth of any child has been registered without a name, the parent or guardian of such child shall, within 12 months from the date of registration of the birth of child, give information regarding the name of the child to the Registrar either orally or in writing. The above section makes it clear that the birth of a child can be registered without name and name can be added later. Admittedly, in this case, the date of birth of the petitioner as per the register is 09.03.1965, which has been registered on 13.03.1965 without name of the child.



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9. It is the specific case of the petitioner that she has an elder sister by name Packiyajothi and she was born on 14.09.1957 and younger sister and brother and they were born subsequent to the petitioner. It is relevant to note that next brother of the petitioner is also born in the year 1968, his name is also not registered in the birth certificate. Gender has been mentioned in the birth certificate.

10. As per Section 59 [3] Tamil Nadu Government Servants [Conditions of Service] Act, 'the application shall be accompanied by entries in Secondary School Leaving Certificate, School, College or University records, birth extract from records of local bodies or military discharge certificates. Therefore, for proving date of birth, the certificate from the local authority, the register maintained by the military discharge certificate is also relevant. The Revenue records clearly indicate number of brothers and sisters of the petitioner, which is not in dispute. Similarly, the entries in the Birth Register has not been revoked by any decree obtained subsequently. Further the Revenue Divisional Officer's



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Report also indicate that only on the basis of the earlier submissions made by the parents, the petitioner was admitted in the school. No documents have been produced at the relevant point of time. These facts clearly indicate that on the basis of statements given by the parents, the age of the petitioner was originally recorded as 02.06.1964 in the school records.

11. It is the specific case of the petitioner that her parents are illiterate. Admittedly, they have not been examined before issuance of the impugned Order as they have already died. However, the records have been verified by the authorities. The fact that the female child born to the parents of the petitioner on 09.03.1965 has not been disputed. The enquiry conducted by the Revenue Divisional Officer does not indicate that the petitioner was not born on 09.03.1965. However, much importance has been given to the entry to the effect that two children have already been born to the parents. It is relevant to note that there is no dispute with regard to the number of children born to Thangamani and Arputhakanmani. The insignificant entries as to the number of



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children found in the birth register, ought not have been given much importance by the respondents. The contention of the respondents is that the petitioner has not completed 15 years while taking up examination in X Standard. It is relevant to note that even there may be false statement by the parents that the petitioner has not completed 15 years while taking up X Standard examination. This aspect has been dealt by this Court in a judgment in Writ Petition No.9697 of 2020, wherein this Court has held as follows :

“Insofar as one of the doubts raised by the Commissioner of Revenue Administration relating to the claim that the petitioner could not have appeared for the SSLC examination since he would have been only 14 years and 7 months as on 01.03.1977 is concerned, there is no mandatory rule that a candidate appearing in the SSLC examination should not be less than 15 years. No doubt, the requirement for appearing in the SSLC examination is 15 years. The Government regulations, however permits a person to appear for the examinations after obtaining the



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necessary permission from the District Educational Officer, if he is lesser than 15 years by not more than two years and 15 from the Chief Educational Officer, if he is lesser than 15 by more than 2 years at the time of taking the SSLC examination. In case, such a candidate does not obtain the permission at the time of taking the examination, these authorities are subsequently ratify this position. Thus, the prescription of 15 years as age, as a criteria to appear in the SSLC examination is not mandatory but only directory in nature. Incidentally, the petitioner herein, had produced the copy of the proceedings of the Directorate of Examination dated 22.08.1992, whereby ratification was issued in favour of the similarly placed candidate, who had not completed 15 years of age when he had taken the SSLC examination.

Similarly when the certificate or entry is not disputed, there shall be a presumption attached to the birth extract even as per under section 17[2] of the Indian Evidence Act. Besides, the presumption is also applied to



all the entries made in the Government records.

12. Further, the letter of the Government in 14914/S2/2018-1, dated 18.07.2018 has been produced before this Court, wherein it has been held as follows :

“In compliance with the aforesaid directions of the High Court of Madras, the appointing authorities while considering the application for alteration of date of birth as per the procedures contained in section 50 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2010 (Tamil Nadu Act 14 of 2016) and letter dated 23.06.2004 referred to in para 1 above, shall verily as to whether the Government employee seeking alteration of date of birth, has completed 15 years of age in case of 5.5LC Examination held upto 1977 and 14 years in case of SSLC Examination held from 1978, at the time of appearing for the said examination.”

Even the above circular makes it clear that the a person sitting for SSLC



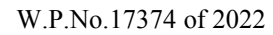
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examination ought to have completed only 14 years at the time of appearing for the said examination. The petitioner has appeared for SSLC examination after 1978. Even in such case, only 14 years completion is required. Therefore, merely on the basis of suspicion and inference drawn by the Revenue Divisional Officer and Additional Chief Secretary, the original entries found in the birth certificate cannot be negated. In such view of the matter, the authorities rejecting the application of the petitioner cannot be sustained in the eye of law.

13. Accordingly, the impugned Order of the first respondent dated 12.01.2022 is set aside and the first respondent is directed to alter the date of birth of the petitioner in the service records as 09.03.1965.

14. With the above direction, this Writ Petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

29.08.2023



Neutral Citation : Yes/No

To,

1. The Additional Secretary,
Health & Family Welfare Department,
Secretariat, Fort St. George,
Chennai – 600 009.
2. The Additional Secretary/Commissioner
of Revenue Administration,
Chepauk, Chennai – 600 005.



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N.SATHISH KUMAR, J.

VTC

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