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WP.No.28097/2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.09.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.No.28097/2017 & WMP.Nos.30186 & 30187/2017

S.R.Singara Subramanian

... Petitioner

Versus

**1.The Secretary
Higher Education Department
Secretariat, Chennai 600 009.**

**2.The Annamalai University
rep.by its Registrar,
Annamalai Nagar -608 002.
Cuddalore District.**

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records on the file of the 2nd respondent herein in (1) University Order No.556/2017 (C) dated 07.04.2017 (2) Office Memorandum No.C.C2/4253-99/2017 dated 11.05.2017 and (3) Office Memorandum No.C.C2/4253-99/2017 dated 17.06.2017 and quash the same and to issue consequential direction to the respondents to restore the order in U.O.No.846/2002 dated 6.11.2002 recording petitioner date of birth as 07.07.1967 instead of 07.04.2017 and grant him all consequential benefits.



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For Petitioner	:	Mr.T.Dharani
For R1	:	Mr. R.Neethi Perumal, GA
For R2	:	Mr.E.C.Ramesh
		Standing Counsel

ORDER

- (1) The writ petition has been filed in the nature of a certiorarified mandamus seeking records of the 2nd respondent, Registrar, Annamalai University in the order dated 07.04.2017 and an Office Memorandum dated 11.05.2017 and a further Office Memorandum dated 17.06.2017 and set aside all the aforementioned orders / Office Memorandums and restore the earlier order of the 2nd respondent dated 06.11.2002 by which the Date of Birth of the petitioner was recorded as 07.07.1967 instead of 07.04.1967.
- (2) In the affidavit filed in support of the writ petition, it had been stated that the petitioner had joined Annamalai University in January 1999 as Lecturer in Geology Department. He had then, immediately after joining, on 29.05.2001, within five years from the date of joining, had forwarded an Extract of Birth Certificate obtained from the Tiruppur Municipality which reflected that his Date of Birth was actually 07.07.1967. Placing this document before the 2nd respondent, he



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sought for correction of the Date of Birth in his Service Records from 07.04.1967 to 07.07.1967. The 2nd respondent had stated that the change in the Date of Birth shall be recorded if documentary evidence such as SSLC Book as corrected or a Court order is produced by him. This was by a communication dated 17.07.2001. The petitioner then, though he had a Birth Certificate issued by the Tiruppur Municipality, had filed OS.No.47/2002 before the District Munsif Court at Chidambaram and obtained a decree that his actual Date of Birth was 07.07.1967 and not 07.04.1967. It must be straightaway stated that such decree would not come to the assistance of the petitioner herein consequent to the ratio laid down by a Division Bench of this Court in WA.No.2261/2019 dated 31.07.2019, wherein it had been stated that the procedure to correct the Date of Birth had been stated in Section 59[1] of the Tamil Nadu Government Servants [Conditions of Service] Act, 2016, and the stipulations therein do not include obtaining a decree from a Civil Court. A decree from a Civil Court would not be of any assistance for any applicant seeking to change his/her Date of Birth. Thereafter, the petitioner, after obtaining such decree, had



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again made a representation to the 2nd respondent on 26.07.2002. The 2nd respondent had passed an order on 07.04.2017 rejecting the petitioner's representation by stating that the request of the petitioner cannot be acceded to and rechecked the Date of Birth from 07.07.1967 to 07.04.1967 in the records of the University. Consequential orders were also passed accordingly. Questioning these orders, the petitioner had filed the present writ petition.

- (3) The entire issue revolves around Section 59 of the Tamil Nadu Government Servants [Conditions of Service] Act, 2016. The said provision relates to alteration of Date of Birth. The petitioner had given his application within five years from the date of his entry into service. Therefore, Section 59[1] and Section 59[2] of the said Act alone would apply to the petitioner herein. Section 59[3] of the Act relates to a situation where an application is filed after five years of entry into service.
- (4) The specific contention of the learned counsel for the petitioner is that the appointment of the petitioner was on 26.04.1998 and the first application given by the petitioner was on 29.05.2001 and after



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obtaining the Court decree, the petitioner had given a further representation on 26.07.2002. Both these applications are made within five years from the date of initial appointment of the petitioner herein.

- (5) Sections 59[1] and 59[2] of the Tamil Nadu Government Servants [Conditions of Service] Act, 2016, are as follows:-

"59.Alteration of Date of Birth:-

(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



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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)."

- (6) The procedure under Section 59[1] contemplates that the application given by the petitioner with the Extract of the Birth Certificate should be forwarded by the respondents to the Commissioner of Revenue



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Administration for investigation of the correctness of the said Birth Certificate by an officer not below the rank of the Deputy Collector and thereafter, on receiving such report, necessary orders should be passed. This would therefore, imply that the Birth Extract which the petitioner relies on, namely, the Birth Extract issued by the Tiruppur Municipality, will have to be examined by the 2nd respondent in accordance with the provisions under Section 59[1]. The respondents have to forward the Birth Extract to the appropriate authority, namely, Commissioner of Revenue Administration and the said Commissioner of Revenue Administration must take the assistance of an officer not below the rank of Deputy Collector, who should verify this particular Birth Extract with the originals in the Tiruppur Municipality and thereafter, give a Report and on the basis of such Report, the 2nd respondent should pass appropriate orders.

- (7) The 2nd respondent had not undertaken such procedure. On the other hand, the 2nd respondent had initially stated that the petitioner should get an order of a Court declaring his Date of Birth. Thought he petitioner had obtained such an order of a Court, that order is null and



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void in view of the pronouncement of the judgment of the Division Bench of this Court dated 31.07.2019 made in WA.No2261/2019, referred supra. The Impugned Order had proceeded on the basis that the order of the Court would not come to the assistance of the petitioner herein which is correct. But the respondents are also under obligation to examine the veracity of the Birth Certificate.

- (8) Let appropriate procedure as enunciated under Section 59[1] of the Act be followed and let necessary investigation be done about the veracity of the Birth Certificate produced by the petitioner herein and thereafter, the respondents may pass a fresh order taking into consideration, that the original application given by the petitioner was within five years from the date of his joining in the service.
- (9) In view of this particular observation made, the Impugned Orders are set aside. An obligation is placed on the 2nd respondent, to conduct necessary enquiry in accordance with the observations made above and then, pass necessary orders. The 2nd respondent may endeavour to complete the said process within a period of six months from the date of a receipt of a copy of this order.



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(10) The writ petition stands **disposed of**. No costs. Consequently,
connected miscellaneous petitions are closed.

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AP

Internet : Yes

To

- 1.The Secretary
Higher Education Department
Secretariat, Chennai 600 009.
- 2.The Annamalai University
rep.by its Registrar,
Annamalai Nagar -608 002.
Cuddalore District.



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C.V.KARTHIKEYAN, J.,

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