



1

W.P.(MD)No.5861 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.04.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.5861 of 2023

and

W.M.P(MD)No. 5421 of 2023

N.Thirunavukkarasu

... Petitioner

Vs.

1.The Joint Director of School Education,
College Road,
Chennai - 600004.

2.The Chief Educational Officer,
Virudhunagar District,
Virudhunagar.

3.The District Educational Officer,
(Secondary Grade),
Sivakasi,
Virudhunagar District.

4.The Headmaster,
Government High School,
Mamsapuram,
Sivakasi Taluk,
Virudhunagar District.

... Respondents

PRAYER: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records



in proceedings in O.Mu.No.7969/A6/2022 dated .02.2023 issued by the second respondent to consider the request of the petitioner.

For Petitioner : Mr.P.Arun Jayatram
For Respondents : Mr.N.Satheeshkumar
Additional Government Pleader
* * *

ORDER

Heard the learned counsel for the petitioner.

2. The writ petitioner was appointed as BT Assistant (History) on 09.12.2012. He was posted in Government Higher Secondary School, Mamsapuram, Srivilliputhur, Virudhunagar District. Subsequently, he was transferred to the fourth respondent School. The case of the petitioner is that he was actually born on 19.10.1963. But in the school records, it was mentioned as 18.08.1962. The petitioner submitted an application on 20.04.2017, for altering his date of birth. Since it was not considered, he filed W.P.(MD)No.9862 of 2019. This Court vide order dated 24.04.2019, directed the authority to consider the petitioner's case and pass final orders. A non speaking order was passed by the CEO, Virudhunagar District on 15.02.2021. Challenging the same, the petitioner filed WP(MD)No.11568 of 2021. When the said writ petition



was taken up for hearing this Court passed an interim order on

23.08.2022 in the following terms:

"4. In normal circumstances, I would have remitted back the matter to the second respondent herein for re-consideration for passing of a speaking order. However, since the present writ petition is second round of litigation, further prejudice would be caused to the petitioner, if the matter is remitted back.

5. Accordingly, there shall be a direction to the second respondent herein, to re-consider the fourth respondent's proposal after giving due opportunity to the petitioner, in accordance with the earlier order passed by this Court in W.P.(MD)No.9862 of 2019, dated 24.04.2019, and pass final orders, without reference to the present impugned order, dated 15.02.2021. Such orders shall be passed on or before 10.10.2022."

Pursuant to the said direction, the second respondent passed an impugned order rejecting the petitioner's request. Challenging the same the present writ petition came to be filed.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of this petition. His core contention is that the petitioner had submitted his application for alteration of date of birth within five years after entering into service. His claim is duly backed by the birth extract from the local body. His



genuineness is not in doubt. Therefore, according to the learned counsel the impugned order has to be necessarily set aside.

4. The respondents have filed counter affidavit and the learned Additional Government Pleader took me through its contents and he pressed for dismissal of the writ petition.

5. I have carefully considered the rival submissions and went through the materials on record. I do endorse the contention of the learned counsel for the petitioner that based on the birth certificate issued by the local body, an employee can seek alteration of date of birth. In the case on hand, the birth certificate reads that the petitioner was born on 19.10.1963. In fact, the petitioner's birth was duly registered with the Srivilliputhur Municipality on 19.12.1963 itself. However, the only question that calls for consideration is whether the application was filed in time. Here again, the application had been submitted within five years after the petitioner's entry into service. Though the petitioner's case is duly backed by the birth certificate and the application appears to have been filed within five years after entry into service, I have to non suit the petitioner by upholding the contentions of the learned Additional



Government Pleader that the application was not submitted to the authority competent to make the appointment.

6. Section 59(2) of Tamil Nadu Government Servants (Conditions of service), 2016, reads as follows:

"59.(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 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). "

7. The said provision clearly states that application for alteration of date of birth shall be made to authority competent to make an appointment to the post, held by the applicant. The petitioner was holding the post of BT Assistant. It is only the Joint Director of School Education who is competent to make the appointment. The petitioner appears to have given application only to the Headmaster. Though in the typed set of papers, letters purportedly sent by the Headmaster of fourth respondent school to the Joint Director of School Education have been enclosed, there is nothing on record to show that the Joint Director of School Education was cognizant of the petitioner's application in time.



The application was not made to the authority competent to make appointment the BT Assistant. It is for this reason, I am not inclined to interfere with the impugned order.

8. The learned Additional Government Pleader would of course, insinuate that during the relevant time, the retirement age was 58 years and the petitioner was due to retire on 31.08.2020 and that the first writ petition was filed by the petitioner only in the year 2019 and that the Headmaster had probably obliged the petitioner.

9. I decline to go into the said allegation as I am non-suited the petitioner by invoking Section 59(2) of the Tamil Nadu Government Servants (Conditions of service), 2016. This Writ Petition is dismissed accordingly. No costs. Consequently, connected miscellaneous petition stands closed.

27.04.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No

pnn



WEB COPY



To

- 1.The Joint Director of School Education,
College Road,
Chennai - 600004.
- 2.The Chief Educational Officer,
Virudhunagar District,
Virudhunagar.
- 3.The District Educational Officer,
(Secondary Grade),
Sivakasi,
Virudhunagar District.
- 4.The Headmaster,
Government High School,
Mamsapuram,
Sivakasi Taluk,
Virudhunagar District.



WEB COPY



8

W.P.(MD)No.5861 of 2023

G.R.SWAMINATHAN,J.

pnn

W.P.(MD)No.5861 of 2023
and
W.M.P(MD)No. 5421 of 2023

27.04.2023