



W.P(MD)No.14406 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.04.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.14406 of 2020

and

W.M.P(MD)No.12056 of 2020

C.Bai

... Petitioner

Vs.

- 1.The State of Tamil Nadu
Represented by it Secretary to Government,
Education Department,
Secretariat, Fort St.George,
Chennai.
- 2.The Director of School Education,
College Road,
Nungambakkam,
Chennai - 600 006.
- 3.The Accountant General (A&E),
Office of the Accountant General,
No.361, Anna Salai,
Teynampet, Chennai - 600 018.
- 4.The Chief Educational Officer,
Tuticorin District,
Tuticorin.



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- 5.The District Educational Officer,
(Higher Secondary Schools), Tiruchendur,
Tuticorin District,
Tuticorin.
- 6.The Correspondent,
T.D.T.A. Pulamadan Chettiar National
Higher Secondary School,
Sathankulam,
Tuticorin District.
- 7.The Manager,
(Higher Secondary School)
Thoothukudi-Nazareth Diocese,
Thoothukudi.
- 8.The Commissioners of Revenue Administration,
Chepauk, Chennai - 5.
- 9.The District Collector,
Thoothukudi District,
Thoothukudi.
- 10.The Revenue Divisional Officer,
Tiruchendur,
Thoothukudi District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings of the 4th respondent in Moo.Mu.No.539/Aa3/2020 dated 28.05.2020 as well as the impugned proceedings of the fifth respondent in Na.Ka.No.951/Aa4/2014 dated 06.02.2020 (received under RTI Act vide proceedings in O.Mu.No. 1624/Aa4/2020 dated 30.06.2020 issued by the fifth respondent) and quash the



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same and consequently directing the respondents 1 to 7 to pay monthly salary with increments (from 01.04.2014 to 31.05.2017 for 38 months), provident fund, gratuity, unavailed earned leave surrender, other pensionary benefits as well as monthly pension and all other monetary benefits by considering the petitioner's correct date of birth as 14.09.1958.

For Petitioner : Mr.G.Prabhu Rajadurai

For R1, R2, R4 : Mr.G.Suriyananth
R5, R8 to R10 : Additional Government Pleader

For R3 : Mr.P.Gunasekaran
Standing Counsel

For R6 and R7 : No appearance

ORDER

Heard the learned counsel for the petitioner and the learned Additional Government Pleader for respondents 1, 2, 4, 5, 8, 9 and 10, learned Standing Counsel for the third respondent. None appears for respondents 6 and 7.

2.The learned counsel for the petitioner joined the sixth respondent school as Post Graduate Teacher on 18.06.1996. Soon thereafter, she made representation to the sixth respondent herein for alteration of her date of birth as well as religion in her Service Record. She subsequently, issued legal notice dated 23.02.1998. That was followed by institution of O.S.No.311 of 1998 on



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the file of the learned District Munsif Court, Sathankulam, for correction of her date of birth and religion in the SSLC Book and service records. The suit was decreed on 29.01.2010. It was declared that the petitioner was born on 14.09.1958. In her Service register, her date of birth was shown as 24.03.1956. Based on the said civil Court's decree, she filed W.P.(MD)No.1900 of 2014 for effective corresponding changes in the service record and deferring the date of superannuation. Interim order was granted in her favour on 19.03.2014 and on the strength of the interim order she continued to work till 14.09.2016 which was the actual date of superannuation. Thereafter, she filed W.P.(MD)No.18549 of 2016 to extend her service till the end of the academic year that is 31.05.2017. She obtained an interim order in the said writ petition also. However, W.P.(MD)No.1900 of 2014 was disposed of on 18.11.2019, in the following terms:

"10.This Court prima facie satisfied that the petitioner has sufficient documentary evidence to show that his date of birth has been wrongly recorded in the school records. In this case, the petitioner has produced the marriage certificate, dated 14.09.1958 issued in favour of the petitioner's parents. When the marriage of the petitioner's parents was in September' 1957, the petitioner's date of birth cannot be presumed to be on 24.03.1956, six months prior to the marriage itself. Hence, the petitioner's application can be considered by verifying the genuineness of the certificate produced by the petitioner.



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11. Considering the facts and circumstances, this Court is not in favour of giving a positive direction to the respondents to alter / change the date of birth in the service register as well as the SSLC Book. However, the Writ Petition is allowed and the sixth respondent shall forward the application along with a fresh representation and documents forthwith to the fourth respondent, who shall consider the application on merits following Rule 49 of Tamil Nadu State and Subordinate Services Rules, and pass appropriate orders. Such exercise shall be done within a period of six months from the date of receipt of a copy of this order. The petitioner may also ensure cooperation with the sixth respondent in reconstructing the papers, if the sixth respondent is unable to trace the records / representation submitted earlier by the petitioner to the sixth respondent. This writ petition is disposed of accordingly. No costs."

3. As rightly pointed out by the learned counsel for the petitioner, it was not brought to the notice of the learned judge that since the petitioner was employed in a private school, she could not have approached the administrative tribunal for relief.

4. Be that as it may, in view of the liberty given to approach the authority, representation was given. However, the impugned order dated 06.02.2020 was passed by the fifth respondent rejecting the petitioner's request. The fourth



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respondent also passed a similar order on 28.05.2020 on the same lines.

Challenging the same, the present writ petition came to be filed.

5. The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of this writ petition and called upon this Court to set aside the impugned orders and grant relief as prayed for. The respondents have filed counter affidavit and the learned Additional Government Pleader took me through its contents. The prime reason set out in the counter affidavit in support of the impugned orders is that the petitioner failed to adduce evidence as envisaged in Rule 49 of Tamilnadu State and Subordinate Services Rules. He pressed for dismissal of this writ petition.

6. I carefully considered the rival submissions and went through the materials on records. Rule 49 of Tamil Nadu State and Subordinate Service Rules is 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.



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(d) In considering the question of permitting an alteration on the date of birth as entered in the official records even when such entry is proved to have been due to a bonafide 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 Tamil Nadu Public Service Commission shall be consulted in the case of an applicant who has been initially recruited through the Tamil Nadu Public Service Commission, if it is proposed to accept his request for alteration of date of birth.

(e) The Procedure laid down in sub-rule (a) 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.

(f) The decision of the Tamil nadu Public Service Commission, the appointing authority or the Government, as the case may be, shall be final."

7. It is seen that the petitioner approached the management within 5 years after joining service. In fact, the petitioner filed civil suit seeking alteration of her date of birth also. The suit came to be decreed. The said decree cannot be



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categorized as having been given by a Court that was *coram non judice*. Since the petitioner was not a Government servant and since she was employed only in a private school, she could not have approached the administrative tribunal for relief. She rightly moved the jurisdictional civil Court for relief. The Civil Court granted decree in her favour. Since, the Government was a party to the civil suit, the decree is clearly binding on the department.

8. Be that as it may, the petitioner has placed unimpeachable materials before the department as well as before this Court. The petitioner's parents got married only on 12.09.1957. The Trivancore Church Council has issued certificate in this regard. Therefore, the petitioner could not have been born on 24.03.1956. The entry in the school record is obviously erroneous. It is further confirmed by the baptism certificate which indicates that the petitioner was born on 14.09.1958. I have already held that the decree granted in favour of the petitioner is more than sufficient to sustain her claim. The evidence as contemplated under Rule 49 of the Tamil Nadu State and Subordinate Service Rules, was very much adduced before the respondents. All the requirements required for altering one's date of birth in the service register have been fulfilled in this case. More than anything else, the petitioner by virtue of interim orders granted by this Court had served her full term.



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9. In this view of the matter, the order impugned in this writ petition is set aside. The petitioner will be entitled to all the consequential monetary and other benefits. The respondents will treat the petitioner as having been born on 14.09.1958 and her date of superannuation shall be treated as 30.09.2016.

10. This writ petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

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

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To

- 1.The Secretary to Government, State of Tamil Nadu
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- 2.The Director of School Education, College Road, Nungambakkam,
Chennai - 600 006.
- 3.The Accountant General (A&E), Office of the Accountant General,
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G.R.SWAMINATHAN, J.



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and
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