



W.P.(MD).No.17261 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 14.07.2023

PRONOUNCED ON : 25.07.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.17261 of 2020

and

W.M.P(MD)Nos.14454 of 2020 & 15128 of 2021

M.Cecil

... Petitioner

Vs.

1.The Principal Secretary/
Commissioner of Revenue Administration,
Chepakkam,
Chennai – 600 005.

2.The Director General of Police,
Tamil Nadu,
Chennai – 600 004.

3.The Superintendent of Police,
Nagercoil,
Kanniyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned order passed by the first respondent in his letter No.RA.3(3)/59415/2015 dated 24.03.2020 and quash the same as illegal consequently direct the respondents to



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provide service to the petitioner till 30.05.2022 as per G.O.Ms.No.51, Personnel and Administrative (S) Department, dated 07.05.2020.

For Petitioner : Mr.T.Vadivelan
For Respondents : Mr.N.Muthu Vijayan
Special Government Pleader

ORDER

The present Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order passed by the first respondent, dated 24.03.2020 and consequently to direct the respondents to provide service to the petitioner till 30.05.2022 as per G.O.Ms.No.51, Personnel and Administrative (S) Department, dated 07.05.2020.

2.The petitioner was appointed as a Junior Assistant in the second respondent office through TNPSC on 04.02.2010. His original date of birth as per birth certificate is 02.05.1963. But due to the inadvertence of his illiterate parents, his date of birth is wrongly given as 28.04.1962 in the School record at the time of admission in 1st standard. On that basis, the petitioner's date of birth is mentioned as 28.04.1962 in all the relevant school records. However, the petitioner's



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date of birth is clearly mentioned in his birth certificate as 02.05.1963. Hence, immediately after his employment on 27.12.2012, he sent a detailed representation to the first respondent through the second respondent requesting to alter his date of birth in the certificates as per his birth certificate as 02.05.1963 instead of 28.04.1962.

3.That apart, as per his date of birth in the school certificate, his date of retirement was fixed as on 30.04.2020. Though the petitioner has sent several representations through the third respondent to the first respondent requesting to pass orders on his application dated 27.12.2012, no orders were passed. Without considering the said aspect, the third respondent was preparing to retire from his service on 30.04.2020. Had the date of birth of the petitioner been altered by the first respondent on the basis of his application, dated 27.12.2012, then his retirement would have been postponed to the next year ie., on 30.05.2021. Hence, he filed a Writ Petition in W.P(MD)No.6131 of 2020 seeking to restrain the respondents from retiring him from service on 30.04.2020, pending consideration of his application dated 27.12.2012 on the file of the first respondent seeking to alter his date of birth as 02.05.1963 instead of 28.04.1962. During the pendency of the same, the first respondent



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passed the impugned order, dated 24.03.2020, rejecting the petitioner's request for a change in date of birth. Challenging the said impugned order, the present Writ Petition came to be filed.

4.The petitioner has challenged the impugned order, dated 24.03.2020 assailing the first respondent's stand that the petitioner did not produce any conclusive proof to prove his date of birth. In addition to that, his plight is that the first respondent ought to have considered the other proofs produced by the petitioner, namely the birth certificate of the siblings of the petitioner. The further contention of the learned counsel appearing for the petitioner is that the first respondent committed a serious error in keeping the petitioner's representation, dated 27.12.2012 without consideration till the verge of his date of retirement, thereby defeating the purpose of making an application before the first respondent. On that basis, the learned counsel appearing for the petitioner relied upon the order passed by this Court in ***W.P(MD)No.32142 of 2018, dated 04.01.2019 [K.Chandrasekaran Vs. The Principal Secretary to Government and others]***, in a case seeking to alter the date of birth in service records and this Court has passed a favourable order. The relevant portion of which is extracted as follows:-



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"11.No reason has been pointed out as to why the extract of the birth certificate issued by the Registration Department should not be accepted. When the employee is expected to be prompt in moving the authorities seeking alteration in the date of birth, equally the employer is also expected to be prompt in the disposal of the applications. There is no explanation for the long kumbakarna sleep on the part of the respondents. When the documents do not show that the alteration in the date of birth is unwarranted or mistaken or it is asked for with any hidden agenda, then the Court has to set right the mistake."

5.Per contra, the learned Special Government Pleader appearing for the respondents vehemently contended that the impugned order, dated 24.03.2020 passed by the first respondent does not warrant any interference because the said order was passed after elaborate enquiry and investigation made in accordance with law as per Rule 59(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. The Sub Collector, Padmanabhapuram, elaborately conducted an enquiry with the petitioner's father R.Muthunayagam, the petitioner's mother, namely S.Kunjammal, the petitioner's elder



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brother M.Christober and the petitioner's younger sisters namely 1) M.Leelabai 2) Laila Christal and 3) M.Sulochanabai, Victoria, the Head Mistress of the Government Middle School, Pallikal, Thomadass, Birth and Death Registrar, Ezhudesam Municipality, natives of the petitioner's Village, namely Srikrishnan, Selvarajdavidson and Ammukutti and Village Administrative Officers of Ezhudesam Village and Aarudesam. The basis of the report of the Revenue Divisional Officer, Padmanabapuram was the comparison of the birth certificate produced by the petitioner before the authorities along with the birth register, at the place where the same has been registered ie., the Birth and Death Registrar, Ezhudesam Municipality. That apart, an extensive enquiry and investigation were also conducted with the records maintained in the school, namely the Government Middle School, Pallikal, wherein, the petitioner studied and the operative portion of the said order is as follows:-

"14) On verification of the year 1963 birth register of Ezhudesam Village, Kollencode, it is revealed that the birth of a male child born on 02.05.1963 to Thiru.R.Muthunayakam and Tmt.S.Kunjammal has been registered on 06.05.1963 in page No.21204, Volume No.23 (from 96/1963 to



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195/1963). Section 14 of the Registration of births and deaths Act, 1969, reads as follows:

"14.Registration of name of child:

Where the birth of any child has been registered without a name, the parent or guardian of such child shall within the prescribed period give information regarding the name of the child to the Registrar either orally or in writing and thereupon the Registrar shall enter such name in the register and initial and date the entry".

15) *In this case, the name "M.Cecil" has been inserted in page No.21204 of the year 1963 Ezhudesam village birth register. The name entry is found to be different from the original entries and seem to have been inserted on a later date, without any proceeding or initial of the concerned officials. It is not clear, by whom or when the name entry has been made. This is in contravention to Section 14 of the Registration of births and deaths Act, 1969.*

16) *Further, the birth entry in page No. 21204 of the year 1963 Ezhudesam village birth register reveals that the birth of the child has been informed by Thiru.Muthunayakam, father of Thiru.Cecil, but the signature of the informant is not found in the birth register. The birth entry in 1963 Ezhudesam Village register cannot be considered as genuine due to the irregularities found in the entries in the No.21204 of the birth register.*



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17) In this case, the date of birth of Thiru.M.Cecil has been mentioned as 28.04.1952 in the school certificates. But, the petitioner has relied upon the birth certificate issued by the Sub-Registrar, Kollencode on 04.05.2012. The above mentioned birth certificate has been obtained by the petitioner after a lapse of 50 years, with an intention to alter the petitioner's date of birth. Though the insertion of the name "M.Cecil" in page No.21204 in the Ezhudeesam Village birth register is in violation of Section 14 of the Registration of births and deaths Act, 1969, it is not clear based on what grounds the Sub-Registrar, Kollencode had issued the birth certificate dated 04.05.2012, with the petitioner's name mentioned in it. The birth certificate issued based on the birth entry in the year 1963 Ezhudeesam Village birth register that has been tampered with, cannot be considered as a proof to alter the date of birth of Thiru.Cecil.

18)

19) Further, the Head Mistress, Government Middle School, Pallikal in her statement dated 29.07.2015 has stated that as per the school procedures any correction in the school registers have to be authorized and initiated by the concerned Office Head / Head Master. But, the name "M.Cycil in page No.9 of the year 1961-1985 students Admission Register has been corrected in blue ink as "M.Cecil and the initial of the father has also been corrected without



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any authorization or initial of the concerned officials. Since the entries in the school register seem to have been tampered, it is not a valid document and hence it cannot be considered to be related to the petitioner.

20) The Hon'ble High Court of Madras in its judgement in W.P.No.17792 of 2004 dated 11.07.2017 has also ordered as follows:

"....9) Under the guise of service Rules, alteration of date of birth is sought for. The yardstick applied in the case on hand may not be applicable in all cases. It is made clear that a person, who seeks alteration of his date of birth, should have completed 15 years of age while appearing for 10th Standard Examination and if it is found that the person concerned has not satisfied the said age criteria, the employer of the person concerned can very well cancel the appointment order issued to such person and discharge him/her from service without any monetary benefits due to him/her."

21) As per the above judgement, any person appearing for 10th Standard examination (Old pattern) should have completed 15 years of age and for 10th Standard examination (New pattern) the person should have completed 14 years of age on the first day of the month in which the S.S.L.C Examination is held. If not completed, the High Court has observed that the appointment order of such person could very well be



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cancelled and discharged from service without any monetary benefits due to them.

22) In this case, the petitioner had appeared for S.S.L.C Examination in March 1978 (Old pattern). If the date of birth of the petitioner is presumed as 02.05.1963, the petitioner would have completed only 14 years, 09 months and 29 days and would not be eligible for appearing in S.S.L.C Examination (Old pattern) in March, 1978. Hence, as per the above Court order the petitioner's claim to alter the date of birth is not acceptable."

6.On the basis of the report of the Sub Collector, Padmanabhapuram and also the available records, the first respondent had concluded that the petitioner did not produce any other conclusive proof, other than the birth certificate issued by the Sub-Registrar, Kollencode and hence, his request to alter his date of birth as 02.05.1963 instead of 28.04.1962 is liable to be rejected.

7.Heard Mr.T.Vadivelan, learned counsel appearing for the petitioner and Mr.N.Muthu Vijayan, learned Special Government Pleader appearing for the respondents and anxiously perused the materials available on record.



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8. Though the petitioner's application dated 27.12.2012 was pending before the respondents for more than 8 years, finally, the impugned order dated 24.03.2020 came to be passed by the first respondent only after an elaborate investigation, enquiry and perusal of relevant records maintained before the various institutions, especially, the Birth and Death Registrar of Ezhudesam Municipality and the Government Middle School, Pallikal at Kanyakumari District.

9. The contention of the petitioner is that the first respondent failed to consider the birth certificates of the siblings of the petitioner is not sustainable. When an elaborate investigation has been conducted by the Sub Collector, Padmanabhapuram, with respect to the birth certificate produced by the petitioner himself, which was actually issued after 50 years from the date of his birth and a comparison of the same was made with the birth register maintained by the Birth and Death Registrar of Ezhudesam Municipality and when the genuineness of the birth certificate is also questioned by the report submitted made by the Sub Collector on the basis of the insertion of the petitioner's name in the Birth register on a date subsequent to the date of his birth, which lacks the necessary initial and sanction from



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the competent authority, the findings of the said report cannot be negated. When the veracity of the birth certificate itself is a stake, this Court comes to the conclusion that there is no error in the first respondent's conclusion that the petitioner's birth certificate could not be conclusive proof to alter his date of birth in his service records as 02.05.1963 instead of on 28.04.1962.

10.The Honourable Apex Court in the case of ***Bharat Coking Coal Limited and others Vs. Shyam Kishore Singh*** reported in ***(2020) 3 SCC 411***, in a similar case has categorically held that the onus is on the applicant to prove the wrong recording of his date of birth in his service book and the relevant portion of which is extracted as follows:-

“8. This Court has consistently held that the request for change of the date of birth in the service records at the fag end of service is not sustainable. The learned Additional Solicitor General has in that regard relied on the decision in the case of [State of Maharashtra and Anr. vs. Gorakhnath Sitaram Kamble & Ors.](#) (2010) 14 SCC 423 wherein a series of the earlier decisions of this Court were taken note and was held as hereunder:



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“16. The learned counsel for the appellant has placed reliance on the judgment of this Court in [U.P. Madhyamik Shiksha Parishad v. Raj Kumar Agnihotri](#) [(2005) 11 SCC 465 : 2006 SCC (L&S) 96] . In this case, this Court has considered a number of judgments of this Court and observed that the grievance as to the date of birth in the service record should not be permitted at the fag end of the service career.

17. In another judgment in [State of Uttaranchal v. Pitamber Dutt Semwal](#) [(2005) 11 SCC 477 : 2006 SCC (L&S) 106] relief was denied to the government employee on the ground that he sought correction in the service record after nearly 30 years of service. While setting aside the judgment of the High Court, this Court observed that the High Court ought not to have interfered with the decision after almost three decades.

19. These decisions lead to a different dimension of the case that correction at the fag end would be at the cost of a large number of employees, therefore, any correction at the fag end must be discouraged by the court. The relevant portion of the judgment in [Home Deptt.v. R. Kirubakaran](#) [1994 Supp (1) SCC 155 : 1994 SCC (L&S) 449 : (1994) 26 ATC 828] reads as under: (SCC pp. 158 59, para 7)



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"7. An application for correction of the date of birth [by a public servant cannot be entertained at the fag end of his service]. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose their promotion forever. ... According to us, this is an important aspect, which cannot be lost sight of by the court or the tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the court or the tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued, the court or the tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. ... the onus is on the applicant to prove the wrong recording of his date of birth, in his service book."



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11.Though in this case, the delay in taking a decision on the petitioner's application seeking alteration of his date of birth in service records is attributable to the first respondent, the exercise of investigating about the genuineness of the birth certificate produced by the petitioner has been dealt with elaborately and properly by the first respondent in terms of Rule 59(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016.

12.In furtherance to the same, it is also pertinent to mention that the District Police Office, Kanyakumari District issued the name list, dated 14.11.2019 of those who retired during the year 2020 and in the said retirement list, the name of the petitioner is also included as serial No.31 and the date of retirement is mentioned as 30.04.2020 on the basis of the date of birth mentioned in his service records as 28.04.1962. In addition to that, the respondents have also credited the special provident fund and gratuity amount of Rs.13,661/- on 04.02.2020, earned leave amount of Rs.2,03,825/- and unearned leave amount of Rs.1,24,791/- in the account of the petitioner on 18.11.2020. However, his terminal benefits has not been yet sanctioned only for the reasons attributable to the petitioner not



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submitting the form for Contributory Pension Scheme for his retirement benefits. In view of the same, the District Police Office has already sent a letter, dated 09.12.2020 to the petitioner requiring him to produce the Contribution Pension Scheme form along with a copy of the first page of the Pass Book of the petitioner. However, that exercise has not been done by the petitioner so far.

13.In view of the above facts and circumstances, this Court is of the view that there is no irregularity or illegality in the impugned order passed by the first respondent, dated 24.03.2020 and the Writ Petition is liable to be dismissed.

14.Accordingly, this Writ Petition stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

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NCC : Yes
Index : Yes
Internet : Yes
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To

- 1.The Principal Secretary/
Commissioner of Revenue Administration,
Chepakkam,
Chennai – 600 005.
- 2.The Director General of Police,
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L.VICTORIA GOWRI, J.

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Pre-Delivery Order made in
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