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W.P.No.7332 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.04.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.7332 of 2021

and

W.M.P.Nos.7842, 7843, 24935 and 24937 of 2021

S.Chandramohan

... Petitioner

Vs.

1. The Joint Director (Vocational),
DPI Complex, College Road,
Chennai – 600 006.

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

3. The District Educational Officer,
District Education Office,
Thiruchengodu, Namakkal District.

4. The Headmaster,
Government Higher Secondary School,
Namakkal North, Namakkal District – 637 003.

... 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 of the first Respondent in Nee.Mu.Number 12631/Vee1/1E3/2020 dated 30.07.2020 along with enquiry report and quash the same consequently direct the second



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respondent to disburse the retirement cum pensionary benefits and including pension based on Petitioners explanation dated 30.04.2019.

For Petitioner : Mr.M.Saravanakumar

For Respondents : Mr.K.H.Ravikumar,
Government Advocate

ORDER

The petitioner herein was initially appointed as part-time Teacher on 01.09.1986 in the Namakkal District. His services were regularized in the post of Vocational Inspector (Computer Science) on 16.10.1992. At the time of petitioner entering into service, his Date of Birth was registered as 05.01.1961 in the Service Register and whereas, the Date of Birth mentioned in all educational certificates is 05.01.1960. If the Date of Birth mentioned in the educational certificates is to be taken into consideration, the petitioner would have retired from service on 31.01.2018. But taking into consideration the Date of Birth mentioned in the Service Register of the petitioner, the petitioner was allowed to continue beyond 31.01.2018. While so, in the month of September 2018, the respondents having come to know about the discrepancy in the Date of Birth mentioned in the educational records of the petitioner and the Date of Birth mentioned in the Service Register, pursuant to a complaint made by some third party, the petitioner was placed under



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suspension and disciplinary proceedings were initiated and he was not allowed to retire from service pending conclusion of the disciplinary proceedings. Accordingly, a charge-memo dated 28.09.2018 was issued to the petitioner containing five charges and after having conducted an enquiry, the said disciplinary proceedings had culminated into passing a final order dated 16.04.2019, dismissing the petitioner from service on 25.11.2019 passed by the 2nd respondent. Aggrieved by the said order, the petitioner filed an appeal before the 1st respondent and the said appeal came to be rejected by the 1st respondent by an order dated 30.07.2020. It is aggrieved by the said order dated 30.07.2020 passed by the 1st respondent, the petitioner approached this Court by filing the present Writ Petition to set aside the same and sought for a direction to disburse the retirement and pensionary benefits to the petitioner.

2. From the perusal of the material placed before this Court by either parties, it cannot be disputed that the Date of Birth mentioned in the educational records is 05.01.1960. Therefore, under no circumstances, the petitioner can be permitted to claim the Date of Birth as 05.01.1961, either basing upon astrology or basing upon unreliable information available with



the petitioner. Further, there is no substantial material that is placed before this Court to substantiate the Date of Birth as 05.01.1961 by the petitioner nor before the respondents during the course of enquiry conducted against the petitioner. Therefore, there cannot be any controversy, and the Date of Birth of the petitioner is bound to be treated as 05.01.1960 alone. Even assuming that the Date of Birth of the petitioner was entered as 05.01.1961 in the Service Register of the petitioner basing upon the misrepresentation made by the petitioner, whether such misrepresentation is true, whether the same would result in imposing the punishment of dismissal from service, that too after the petitioner attaining the age of superannuation or not ? is the only the question that would arise for consideration before this Court.

3. The Date of Birth entered in the Service Register of the petitioner at the time of the petitioner joining in the service as 05.01.1961 was allowed to stand for more than 30 years. Even if it is assumed that the said Date of Birth was entered basing upon the misrepresentation made by the petitioner, the petitioner alone cannot be made responsible for the same. When the petitioner was appointed and his services were regularized basing upon his educational certificates, it is equally the responsibility of the authorities who



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opened the Service Register of the petitioner to verify whether the representation made by the petitioner with regard to his Date of Birth is correct or not. It is not as if no material is available with the respondents to verify the Date of Birth of the petitioner.

4. In the considered view of this Court, the punishment of dismissal from service imposed upon the petitioner through proceedings dated 25.11.2019, as confirmed by the respondent no.1 through impugned proceedings is shockingly disproportionate to the charges levelled against the petitioner. All the charges that are levelled against the petitioner have nothing to do with discharge of his duties in the capacity of Vocational Inspector (Computer Science). It is only the alleged misrepresentation said to have been made by the petitioner at the time of entry into service. Whether such entry was made basing upon the misrepresentation made by the petitioner or otherwise cannot be effectively decided after a lapse of 30 years. The charge against the petitioner that his actual Date of Birth was suppressed and he has furnished the wrong Date of Birth while entering into service cannot be accepted, as such an allegation is being made after a lapse of 30 years.



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5. In a nutshell, the disciplinary proceedings in question came to be initiated basing upon an alleged misconduct committed in the year 1986 or in the year 1992 i.e., after a lapse of 2 or 3 decades. It is settled law that any disciplinary proceedings basing upon the fact that pertain to a period beyond 7 years were considered to be impermissible, as the same amount to violation of principles of natural justice by the Hon'ble Apex in catena of decisions.

6. In the instant case, even if the alleged misconduct or misrepresentation on the part of the petitioner is assumed to be true, the same is of 30 years old. The petitioner cannot be expected to remember whether such an entry with regard to his Date of Birth was made basing upon his misrepresentation or the respondent themselves by mistake made such entry cannot be effectively decided at this length of time.

7. For the above reasons and also on the ground that the punishment of dismissal from service for the alleged misconduct on the part of the petitioner is felt as shockingly disproportionate, this Court is inclined to set aside the impugned order and remit the matter back to the respondent no.2 for passing appropriate orders imposing lesser punishment i.e., other than removal from service, subject to condition of petitioner expressing his willingness to pay



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back all the amounts that are drawn by him after 31.01.2018. In case, if the petitioner files an affidavit expressing his willingness to pay back the entire amounts drawn by him after 31.01.2018, the respondent no.2 shall pass appropriate orders pursuant to this order. The entire exercise as directed above shall be completed by the respondent no.2 as expeditiously as possible at any rate within a period of two months from the date of filing of affidavit by the petitioner.

8. Accordingly, the Writ Petition is disposed of. No costs. Connected Miscellaneous Petitions, if any shall stand closed.

24.04.2024

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

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MUMMINENI SUDHEER KUMAR, J.

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