



WP.No.13603 of 2024

In the High Court of Judicature at Madras

**Reserved on :
04.9.2024**

**Delivered on :
06.9.2024**

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Writ Petition No.13603 of 2024 &
WMP.Nos.14748 to 14750 of 2024

K.Subash Chandra Bose

...Petitioner

Vs

1.The State of Tamil Nadu, rep.
by its Secretary to Government,
Law Department, Secretariat,
Fort St.George, Chennai-9.

2.The Director of Legal Studies,
Kilpauk, Chennai-10.

3.The Commissioner of Revenue
Administration, Ezhilagam,
Chepauk, Chennai-5.

4.The Principal Accountant General
(A&E), Tamil Nadu, No.361,
Anna Salai, Teynampet, Chennai-2.

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the 1st respondent in letter No.10158/Sa.Ka/2022-1 dated 29.4.2024 as well as the impugned proceedings issued by the 2nd respondent in Na.Ka.No. 2384/A4/2016 dated 06.3.2023, quash the same and consequently direct respondents 1 to 3 to pass orders for alternation of date of



WP.No.13603 of 2024

birth of the petitioner in service register as 12.12.1966 instead of 06.4.1964 and to permit the petitioner to continue in service as per the actual date of birth 12.12.1966 with all consequential and other attendant benefits.

For Petitioner : Mr.G.Sankaran, SC for
Mr.S.Nedunchezhiyan
For R1 & R2 : Mr.D.Ravichander, SGP
For R3 : Mrs.V.Yamunadevi, SGP

ORDER

This writ petition has been filed challenging the order passed by the first respondent dated 29.4.2024 and the proceedings of the second respondent dated 06.3.2023 and for a consequential direction to respondents 1 to 3 to alter the date of birth of the petitioner in the service register as 12.12.1966 instead of 06.4.1964 and to grant all consequential service and monetary benefits.

2. The case of the petitioner is as follows :

(i) The petitioner was born on 12.12.1966. However, at the time of admission in school, due to inadvertence, the date of birth was wrongly given as 06.4.1964. In view of the same, the date of birth of the petitioner was recorded as 06.4.1964 in the school records and in the other certificates issued by the educational institutions thereafter.

(ii) The petitioner was selected and appointed as a Lecturer in



WP.No.13603 of 2024

Dr.Ambedkar Government Law College, Chennai. He was re-designated as an Assistant Professor and his probation was also declared. The petitioner realized that his date of birth has been wrongly noted in the service register since it has been incorporated from the date of birth as found in the school records. Therefore, the petitioner submitted an application on 29.9.2016 for correction of his date of birth and the same was kept pending.

(ii) Thereafter, the petitioner filed a suit in O.S.No.54 of 2017 before the District Munsif Court, Thiruvaiyaru against various Government authorities as well as the college, in which, he is working, seeking for the relief of declaration to declare that the petitioner was born on 12.12.1966 and for a consequential mandatory injunction directing the concerned authority to issue the birth certificate by recording the correct date of birth and to further direct the Law Department to change the date of birth of the petitioner in the service records as 12.12.1966 instead of 06.4.1964.

(iii) The said suit was contested and ultimately, it was decreed in favour of the petitioner by judgment and decree dated 26.3.2024. This was also informed to the respondents. In the meantime, the second respondent, through letter dated 06.3.2023, informed the petitioner that there is no scope for altering the date of birth of the petitioner in view of the order passed by this Court in the case of



WP.No.13603 of 2024

R.Santhoshkumar Vs. State of Tamil Nadu & others [W.P.No. 17792 of 2004 dated 11.7.2017] and the consequential guidelines issued by the Government dated 18.7.2018.

(iv) After the petitioner started relying on the decree dated 26.3.2024 granted by the competent Civil Court, the first respondent, through proceedings dated 29.4.2024, rejected the claim of the petitioner on the ground that such a decree is null and void and not binding by relying upon the judgment of a Division Bench of this Court in the case of **M.Ramasubramani Vs. Central Administrative Tribunal, Chennai-104 & others [W.P.No.16062 of 2010 dated 30.9.2013]**. It is under these circumstances, the above writ petition is filed before this Court questioning the proceedings of respondents 1 and 2.

3. Respondents 1 and 2 filed a counter, in which, they justified the impugned proceedings by placing reliance upon the order passed by this Court in W.P.No.17792 of 2004 dated 11.7.2017 and the order passed by the Division Bench of this Court in W.P.No.16062 of 2010 dated 30.9.2013.

4. In the counter, respondents 1 and 2 took a categorical stand that by virtue of the order passed in W.P.No.17792 of 2004 dated



WP.No.13603 of 2024

11.7.2017, which resulted in the guidelines issued by the Government dated 18.7.2018, if the date of birth is changed as requested by the petitioner, he would have completed only 12 years and 6 months on the date of passing his SSLC examination whereas the petitioner should have completed 14 years of age for appearing in the SSLC examination from the year 1978 onwards. Therefore, the impugned proceedings of the second respondent dated 06.3.2023 is justified on this ground.

5. In the counter, respondents 1 and 2 have also taken a stand that the Civil Court cannot grant a decree altering the date of birth and that the same is null and void. In support of this contention, they relied upon the order dated 30.6.2013 passed by the Division Bench of this Court in W.P.No.16062 of 2010. Accordingly, they justified the impugned proceedings of the first respondent dated 29.4.2024.

6. Heard both.

7. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record. This Court has also carefully gone through the impugned orders passed by respondents 1 and 2.



WP.No.13603 of 2024

WEB COPY

8. The short issue that arises for consideration in this writ petition is as to whether the date of birth of the petitioner has to be altered as 12.12.1966 instead of 06.4.1964 based on the application submitted by the petitioner.

9. Even at the inception, this Court must take note of the fact that the petitioner attained the age of superannuation on 30.4.2024 based on his existing date of birth recorded in the service records. However, this event, by itself, will not take away the right of the petitioner to prosecute the relief sought for in this writ petition.

10. It is an admitted fact that in all the records, the date of birth of the petitioner has been entered as 06.4.1964. The petitioner, after joining the service as the Assistant Professor on 20.5.2015, submitted an application on 29.9.2016 for the first time for alternation of his date of birth. There is no doubt that this application seeking for alternation of his date of birth is well within the statutory limit provided under Rule 49 of the Tamil Nadu State and Subordinate Service Rules, which is presently Section 59 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (for short, the Act).



WP.No.13603 of 2024

11. When the petitioner submitted his application on 29.9.2016, it was done purely placing reliance upon the relevant Rule. In the counter affidavit, it has been stated that the application submitted by the petitioner was forwarded to the Principal Secretary/Commissioner, Revenue and Disaster Management Department to conduct an inquiry and to send a report to the Government.

12. By the time the inquiry was taken up, a learned Single Judge of this Court passed an order on 11.7.2017 in W.P.No.17792 of 2004. The relevant portions in the order dated 11.7.2017 are extracted as hereunder :

"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.

10. If stringent action is taken to cancel the appointment of employees seeking alteration of date of birth, in case, the employee has not attained the minimum age to take up the qualifying examination



WEB COPY



WP.No.13603 of 2024

from the School, there is a possibility of reduction of cases seeking alteration of Date of Birth.

11. The Chief Secretary to Government is directed to issue a Circular to all the Government Departments by enclosing a copy of this judgment and ensure that an employee seeking alteration of date of birth is eligible to take up S.S.L.C. examination based on his/her correct date of birth."

13. In view of the above directions issued by the learned Single Judge, the Government had issued the guidelines dated 18.7.2018, the relevant portions of which read as follows :

"4. In compliance with the aforesaid directions of the High Court of Madras, the appointing authorities while considering the application for alteration of date of birth as per the procedures contained in Section 59 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (Tamil Nadu Act 14 of 2016) and letter dated 23.6.2004 referred to in para 1 above, shall verify as to whether the government employee seeking alteration of date of birth has completed 15 years of age in case of S.S.L.C. examination held upto 1977 and 14 years in case of S.S.L.C. examination held from 1978, at the time of appearing for the said examination.

5. A copy of the judgment is also enclosed.

6. I am directed to request that the above guidelines shall be followed scrupulously."

14. In view of the above, the limited scope of inquiry is to



WP.No.13603 of 2024

ascertain the age of the petitioner on the date of passing of his SSLC examination based on the date of birth that is relied upon by the petitioner.

15. The petitioner wanted his date of birth to be altered as 12.12.1966. The petitioner passed the SSLC examination on 10.6.1979. If the date of birth is taken as 12.12.1966, at that point of time, the petitioner would have completed only 12 years and six months whereas the petitioner ought to have completed 14 years in the case of SSLC examination held from the year 1978 onwards.

16. The learned Senior Counsel appearing on behalf of the petitioner submitted that the inquiry ought to have been conducted in line with Section 59 of the Act whereas it was stopped midway.

17. This Court is not able to agree with the said submission since the scope of inquiry has now been restricted by virtue of the order dated 11.7.2017 passed by this Court in W.P.No.17792 of 2004, which has translated itself into a guideline issued by the Government dated 18.7.2018. Till the order of the learned Single Judge dated 11.7.2017 and the consequential guidelines issued by the Government are intact, the Authorities cannot disregard the same nor



WP.No.13603 of 2024

conduct an inquiry independently to determine the date of birth of the petitioner.

18. The next issue is as to whether the decree obtained by the petitioner in the civil court will bind the respondents and accordingly, they have to act upon the same and alter the date of birth of the petitioner in the service records.

19. The order dated 30.9.2013 passed by the Division Bench of this Court in W.P.No.16062 of 2010 gives some indication with respect to the manner, in which, this issue has to be dealt with. The relevant portions in the order dated 30.9.2013 are extracted as hereunder :

"13. The correction of date of birth in the Service Register is also a service related issue, as Rule 49 contemplates correction of date of birth of a Government Servant. Relevant portion of Rule 49 (a) and (b) of the Tamil Nadu State and Subordinate Service Rules reads as follows, :

'49. Alteration of date of birth.-

(a) If at the time of appointment, candidate claims that his date of birth is different from that entered to 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



WEB COPY



WP.No.13603 of 2024

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 Board of Revenue 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 candidate who was born outside the State of Tamil Nadu the investigation through the Board of Revenue shall be dispensed with and the Tamil Nadu Public Service Commission or the appointing authority, as the case may be, shall examine and scrutinise 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 mark 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).'

Admittedly, petitioner applied for correction of date of birth in his service register under that provision on 21.5.1990 while in Government service, which was rejected on 5.10.1991. Ignoring the said statutory bar to go before any other forum regarding service disputes, the petitioner has chosen to approach the



WEB COPY



WP.No.13603 of 2024

Civil Court by filing O.S.No.362 of 1994 before the District Munsif Court, Virudhunagar, and prayed for declaration to declare his date of birth as 3.7.1958 instead of 14.5.1957, which has been entered into in the SSLC certificate, and also for an order of perpetual injunction restraining the defendants in the suit from interfering with his Government service. In the said suit the State Government; the Director General of Police; TNPSC; the Director of School Education; and Sub-Registrar, Vathalakundu, Madurai, were shown as defendants. The respondents herein contested the suit stating that the date of birth alteration sought for in the Service Register was rejected in the year 1991 itself. Petitioner also stated in the plaint that he was in the service of the Tamil Nadu State Government.

14. The Civil Court, which was not vested with the jurisdiction to entertain the said suit on and from 12.12.1988, granted a decree on 17.9.1995 in the suit filed in the year 1994. Based on the Civil Court decree, the petitioner again submitted representation to alter the date of birth before the respondents, which was rejected by the State Government in its order dated 11.4.2002, clearly stating that Civil Court order does not bind the Government and therefore the Government are not obliged to alter the Service Register on the basis of Civil Court's decree. The said order was not challenged by the petitioner.

15. In G.O.Ms.No.758 Education, Science and Technology (E1) Department, dated 25.10.1996, the Government clearly stated that correction to be made in the SSLC Book and the correction to be made in the service register of a Government Servant are different issues and correction of date of birth in the service register has to be examined under Rule 49 of the Tamil



WEB COPY



WP.No.13603 of 2024

Nadu State and Subordinate Service Rules and the Tamil Nadu Administrative Tribunal is competent to entertain any request from the Government Servant. In spite of the said Government Order, the petitioner chose to approach the Civil Court and obtained a decree."

20. The Division Bench of this Court held that the alteration of the date of birth is governed by the Service Rules and there was a forum at that point of time called Tamil Nadu Administrative Tribunal where it had to be agitated if the Government servants did not get the relief. The Tribunal came to effect from 12.12.1988. In view of the same, it was further held that the jurisdiction of the civil court is ousted, that any decree passed by the civil court will be considered to be null and void and that such decree cannot be relied upon for the purpose of altering the service register.

21. The jurisdiction of a civil court to entertain a suit is governed by Section 9 of the Civil Procedure Code. It provides that courts must try all civil suits unless barred. It is now too well settled that the civil court shall have jurisdiction to try all suits of civil nature except suits of which their cognizance is either expressly or impliedly barred.



WP.No.13603 of 2024

22. In the instant case, there is no express bar to lay a suit before the civil court seeking for correction in the date of birth. However, when a person enters Government service, the relevant enactment (Rule 49 of the Tamil Nadu State and Subordinate Service Rules, which is presently Section 59 of the Act) specifically provides for alteration of the date of birth. The Government employee has to necessarily follow the procedure given under this enactment in order to alter the date of birth and to incorporate the same in the service records.

23. In such a scenario, it has to be construed that a suit filed seeking for such a relief, which directly touches upon the service records of the petitioner, is impliedly barred. The petitioner is asking for alteration of the date of birth only to incorporate the same in the service records. Therefore, the decree obtained by the petitioner has a direct bearing on the service record of the petitioner, which is specifically covered under the relevant enactment. Hence, such suits seeking for alteration of the date of birth or the decree, which is sought to be used for altering the service records, must be held to be impliedly barred.

24. By taking cue from the order dated 30.9.2013 passed by



WP.No.13603 of 2024

the Division Bench of this Court and in the light of the above reasonings, this Court holds that the decree dated 26.3.2024 obtained by the petitioner in O.S.No.54 of 2017 on the file of the District Munsif Court, Thiruvaiyaru is null and void and not binding on the respondents. Consequently, the respondents need not rely upon the said decree of the civil court and alter the date of birth in the service records of the petitioner. The upshot of the above discussions is that the impugned proceedings of both the first respondent dated 29.4.2024 as well as the second respondent dated 06.3.2023 do not suffer from any illegality warranting the interference of this Court. Hence, this Court cannot grant the relief as sought for by the petitioner.

25. In the result, the writ petition is dismissed. No costs. Consequently, the connected WMPs are also dismissed.

06.9.2024

Index : Yes

Neutral Citation : Yes

To

1.The Secretary to Government of
Tamil Nadu, Law Department,
Secretariat, Fort St.George,
Chennai-9.



WP.No.13603 of 2024

- 2.The Director of Legal Studies,
Kilpauk, Chennai-10.
- 3.The Commissioner of Revenue
Administration, Ezhilagam,
Chepauk, Chennai-5.
- 4.The Principal Accountant General
(A&E), Tamil Nadu, No.361,
Anna Salai, Teynampet, Chennai-2.

RS



WEB COPY



WP.No.13603 of 2024

N.ANAND VENKATESH,J

RS

WP.No.13603 of 2024 &
WMP.Nos.14748 to 14750
of 2024

06.9.2024