



W.P(MD)No.15219 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.03.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P(MD)No.15219 of 2023

and

W.M.P(MD)Nos.12824 & 12825 of 2023

M.Mathimaran

... Petitioner

Vs.

The Commissioner of Town and Country Planning,
No.608, Anna Salai,
Chennai-600 002.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of CERTiorarified Mandamus, to call for the records relating to the order Na.Ka.No.14036/2014/K1, dated 29.09.2015 passed by the respondent and quash the same and consequently, direct the respondent to alter the date of birth of the petitioner as 21.07.1967, in the place of 21.07.1964 within a time limit to be fixed by this Court.

For Petitioner : Mr.G.Rajagopalan
for Mr.A.Thirumoorthy

For Respondent : Mr.J.John Rajadurai
Government Advocate



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ORDER

The present writ petition has been filed to call for the records relating to the order Na.Ka.No.14036/2014/K1, dated 29.09.2015 passed by the respondent and quash the same and consequently, direct the respondent to alter the date of birth of the petitioner as 21.07.1967, in the place of 21.07.1964 within a time limit to be fixed by this Court.

2. The petitioner M. Mathimaran was originally appointed as Surveyor - Assistant Draughtsman at the Office of the Deputy Director of Town and Country Planning, Madurai vide proceedings of the Director of Town and Country Planning, dated 21-11-1989 and he joined duty on 30-11-1989 afternoon at the Posted Office. The petitioner was sponsored by the Employment Exchange as he possessed the requisite educational qualification of Diploma in Civil Engineering as per the revised special rules for the Tamil Nadu Town and Country Planning Subordinate Service wide G.O.Ms.No. 1111, Housing and Urban Development Department, dated 25-10-1985.

3. The petitioner while working as Surveyor cum Assistant Draughtsman in the Office of the respondent, by undergoing part time education acquired



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Bachelor of Civil Engineering during the year November 1993. During the year 2006-07, notification for direct recruitment to the post of Assistant Director of Town and Country Planning included in the Tamil Nadu General Service was issued by the Tamil Nadu Public Service Commission. The petitioner applied for it by mentioning his date of birth as 21.07.1964. On being selected, he was appointed as Assistant Director of Town and Country Planning vide G.O.128, Housing and Urban Development Department, dated 28-07-2009. Subsequently, he was promoted as Deputy Director vide G.O.38, Housing and Urban Development Department, dated 28-2019. Presently, he is working as Deputy Director of Town and Country Planning at Nagapattinam.

4. In the year 2014, when the petitioner applied for passport, his birth certificate was demanded. Hence, he applied to the Sub-Register Kalaiyarkoil and Tahsildar, Sivagangai Taluk to issue him with Birth Certificate. Only on that occasion, the petitioner came to know that his birth was not registered either in the Revenue Department through the Village Administrative Officer or in the Registration Department. Hence, the petitioner filed Civil Miscellaneous Petition in C.M.P.No.6035 of 2014 before the learned Judicial Magistrate Court No.I, Sivagangai, seeking to issue a direction to the respondents therein to register his as 21-06-1967 in the Register of Births.



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5. After trial, the learned Judicial Magistrate Court No.I, Sivagangai had passed an order dated 29-10-2014 directing the respondents therein to register the petitioner's date of birth as 21-07-1967. Accordingly, the Tahsildar Sivagangai directed the Village Administrative Officer of Sevaoorani to register his birth as 21-07-1967 in the Register of Births of Kalakanmoi Village and issued Birth Certificate of 21-07-1967 as registered and the Registrar of Birth and Death, Kalakanmoi has issued the Birth Certificate, dated 23-03-2015 declaring his date of birth as 21-07-1967.

6. Thereafter, the petitioner made an application to the respondent and the Secretary, Tamil Nadu Public Service Commission, Chennai on 17-07-2014 requesting for alteration of his as 21-07-1967 in the place of 21-07-1964 in his service records and further handed over documents in this regard in person as well. However, vide impugned proceedings bearing Na.Ka.No.14036/2014/k1, dated 29-09-2015, the petitioner's request for alteration of came to be rejected. Challenging the same, this writ petition came to be filed.



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7. The learned Senior Counsel appearing for the petitioner submitted that the respondent has denied to record the petitioner's correct date of birth as 21-07-1967 in his service register on the ground that the alteration of date of birth cannot be made as the application has been preferred by the petitioner after five years of his entry into service, that is, from 30-11-1989, referring an inapplicable Rule 49 (b) of the Tamil Nadu State and Subordinate Service Rules. He further submitted that, Rule 49 (c) of the Tamil Nadu State and Subordinate Service Rules and Section 59 (3) of the Tamil Nadu Government Servants Conditions of Service Act, 2016 does not permit to summarily reject the application for alteration of date of birth, when the birth extract issued by the local authority is available and hence, the impugned order passed by the respondent referring to irrelevant rule, that is, Rule 49 (b) of the Tamil Nadu State and Subordinate Service Rules is liable to be set aside. He, further submitted that the petitioner's parents were illiterates / farmers and they were not aware of the rule of registration of births and as such his birth was not registered immediately after his birth on 21-07-1967. Only out of their ignorance, at the time of admission in the first standard without insisting for the birth certificate, the petitioner was admitted by following the practice of touching the left ear by right hand through back of the head. This has eventually caused in the mistaken entry of date of birth as 21-07-1964 instead



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of 21-07-1967. The learned senior counsel insisted that the petitioner's application ought not to have been rejected by the respondents on the ground that, the same has not been made within five years from the date of his entry into service on 30-11-1989 as Assistant Draughtsman in the Town and Country Planning Department of the Government of Tamil Nadu. The respondents ought to have considered that the petitioner has been directly recruited by the Tamil Nadu Public Service Commission in the year 2009 to the post of Assistant Director of Town and Country Planning and the application for alteration of date of birth was made on 17-07-2014, that is duly within a period of five years from the date of his appointment as Assistant Director vide G.O. 128 of the Housing and Urban Development Department, dated 28-07-2009. He further contended that the five-year limitation would not apply when the date of birth is supported by a Court order and birth extract issued by the local body and on that basis, pressed for allowing the writ petition.

8. Per contra, the respondent has filed a counter affidavit and the learned Additional Government Pleader submitted that the petitioner has requested for change in his date of birth on 17-07-2014 in a letter addressed to the respondent and the same was not entertained for the reason that the petitioner had failed to submit his request for change in date of birth within a period of



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five years from the date of entering into service, that is 30-11-1989, as per rule 49 (b) of the Tamil Nadu State and Subordinate Service Rules.

9. He further submitted that the petitioner has requested for change in his date of birth on the basis of the order passed by the Judicial Magistrate No.I, Sivagangai in C.M.P.No.6035-2014, in which this respondent has not been arrayed as a party by the petitioner. The petitioner has implemented the Sub-Registrar of Kalaiyarkovil, Sub-registry as first respondent and the Tahsildar of Sivagangai Taluk as second respondent in the aforesaid petition. Neither the Sub-registrar nor the Tahsildar, Sivagangai turned up to participate in the trial before the learned Judicial Magistrate and on the basis of the paper publication effected by the petitioner, an ex-party order has been obtained by the petitioner in his favour, directing the respondents to register the petitioner's date of birth as 21-07-1967.

10. Pursuant to the said order of the learned Judicial Magistrate No.I, Sivagangai, the Sub-registrar of Kalaiyarkovil sub-registry registered the petitioner's date of birth as 21-07-1967, following which the birth and death registrar of Kalakanmoi Panchayat had registered the date of birth of the petitioner as 21-07-1967 vide registration no.17 of 2015 on 23-03-2015. The



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petitioner is due for retirement on superannuation on 31-07-2024. At the fag end of his service, he is trying to extend his service through backdoor, by more than three years, thereby depriving the career of his colleagues working in the office of the respondent.

11. Relying upon the judgment of the Hon'ble Apex Court in the case of ***State of Tamil Nadu Vs. T.V.Venugopalan*** reported in ***1994 (6) SCC 302***, the learned Additional Government Pleader submitted that the Government servant having declared his date of birth as entered in the Service Register to be correct, would not be permitted at the fag end of his service career to raise a dispute as regards the correctness of entries in the Service Register. On that basis, he vehemently submitted that the writ petition is arbitrary and unsustainable in the eye of law and pressed for dismissal of the same.

12. Heard the learned Senior Counsel for the petitioner and the learned Additional Government Pleader for the respondent and carefully perused the materials available on record.

13. The petitioner's request for change of his date of birth vide letter, dated 17-07-2014 came to be rejected by the impugned order of the



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respondent, dated 29-09-2015 as per Rule 49 (b) of the Tamil Nadu State and Subordinate Service Rules. Rule 49 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, 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



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by the candidate and shall decide whether the alteration of date of birth may be permitted or the application may be rejected.”

14. Relying upon the aforesaid Rule 49 (b), the respondent has rejected the petitioner's application for alteration of date of birth in his Service Register, dated 17-07-2014 stating that, the respondent ought to have made an application within five years from the date of his original appointment i.e, from 30-11-1989.

15. The learned Senior Counsel appearing for the petitioner contended that the date of appointment of the petitioner should not be reckoned from 30-11-1989 i.e, the date on which he was appointed as Assistant Draughtsman in the Town and Country Planning Department of the Government of Tamil Nadu. On the other hand, the date of appointment should be reckoned from 28-07-2009 i.e, the date on which he was appointed as Assistant Director of Town and Country Planning. Insisting upon the fact that the petitioner has been directly recruited by Tamil Nadu Public Service Commission in the year 2009 to the post of Assistant Director of Town and Country Planning, his application for alteration of date of birth as made on 17-07-2014 has been



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submitted duly within a period of five years from the date of appointment as Assistant Director of Town and Country Planning.

16. Thereupon, he insisted that the petitioner's application cannot be rejected outrightly by a simple order relying upon Rule 49 (b) on the ground of limitation. He further submitted that having rejected the petitioner's application relying upon Rule 49 (b) of the Tamil Nadu State and Subordinate Service Rules, now in the counter affidavit, the respondent should not expand the scope of their impugned order by questioning the validity of the order passed by the learned Judicial Magistrate No.I, Sivagangai in C.M.P.No.6035 of 2014, directing the Sub-register of the Kalaiyar Koil Sub-registry and the Tahsildar of Sivagangai to register the petitioner's date of birth as 21-07-1967.

17. Relying upon the case of ***Mohinder Singh Gill & others Vs. the Chief Election Commissioner, New Delhi & others***, the learned senior counsel vehemently contended that public orders in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the said order. The relevant portion of the aforesaid judgment of the Hon'ble Apex Court judgment reported in Manu Patra, Manu / SC/ 0209 / 1977 is extracted as follows:



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“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji:

(1) “Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by the public authorities are meant to have public effect and are intended to effect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

18. On the basis of the arguments substantiated by either side, now the pertinent question which has to be decided are:

1) whether the date of appointment of the petitioner has to be reckoned with effect from 30-11-1989, i.e, the date of the petitioner's appointment as Assistant Draughtsman with effect from 30-11-1989 or 28-07-2009 i.e, the date on which the petitioner was appointed as



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Assistant Director of Town and Country Planning on direct recruitment by TNPSC?

2) Whether the impugned order has to be tested on the basis of Rule 49 (b) of the Tamil Nadu State and Subordinate Service Rules or the same could be tested on the basis of the order passed by the learned Judicial Magistrate No.I, Sivagangai in C.M.P.No. 6035 of 2014?.

19. The case of the petitioner is that in the year 2014 when he applied for passport, for which his birth certificate was sought for, only then he came to understand that his birth was not registered either in the Revenue Department or in the Registration Department by his illiterate parents, who had been Farmers. Only thereafter, he had filed C.M.P.No.6035 of 2014 before the learned Judicial Magistrate Court No.I, Sivagangai impleading the Sub-Registrar of Kalaiyar Koil Sub-registry and Tahsildar, Sivagangai as respondents, on the basis of his family card, wherein his age was mentioned as 22 in the year 1988. On the basis of the paper publication effected by the petitioner, since the respondents therein did not turn up, the learned Judicial Magistrate No.I, Sivagangai passed an *ex parte* order, directing the respondents therein to register the petitioner's date of birth as 21-06-1967.



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Pursuant to the same, his birth was registered in the Register of birth, Office of Registrar of Birth and Death, Kalakanmoi and the Birth Certificate was issued vide Registration, dated 23-03-2015, declaring the petitioner's date of birth as 21-07-1967. Only on the basis of the said Birth Certificate, the petitioner has made an application to the respondent and the secretary of TNPSC, Chennai on 17-07-2014, requesting for alteration of his date of birth as 21-07-1967 instead of 21-07-1964.

20. Having rejected the petitioner's application, relying upon rule 49 (b) of the Tamil Nadu State and Subordinate Service Rules, fairly accepting the arguments of the learned Senior Counsel that, the public orders publicly made in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, instead of testing the validity of the impugned order of the respondent on the basis of the certificate submitted by the petitioner along with his application seeking alteration of date of birth, in hand the same could be tested within the parameters of the grounds relied upon by the respondent in the impugned order itself. Though the petitioner came to know that his birth was not registered either in the Revenue Department or in the Registration Department in only in the year 2014 when he applied for the passport, it was



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well within his knowledge that he was 22 years old in the year 1988 on the basis of the family card issued in the year 1988, which was in his custody. He has also averred in his affidavit that the Voter ID No.AXA1001476 also would confirm the date of birth of the petitioner.

21. The petitioner was appointed as Assistant Draughtsman in Town and Country Planning Department of the Government of Tamil Nadu on 30-11-1989 i.e, after 1988. Having known that his date of birth is 21-07-1967 on the basis of the family card issued in the year 1988 and his Voter ID as discussed supra, the petitioner ought to have diligently entered his date of birth correctly as early as in the year 1989 itself when his Service Register came to be maintained in the Department of Town and Country Planning. Later, he was appointed as Assistant Director of Town and Country Planning on direct recruitment by TNPSC on 28-07-2009. Since his correct date of birth was very much within his knowledge, at least on 28-07-2009, the petitioner ought to have diligently taken steps to correct his date of birth in his Service Register maintained in the Department of Town and Country Planning while being appointed as Assistant Director. Having missed the chance twice, only on 13-07-2014, the petitioner made an application seeking to alter his date of birth in his Service Records on the basis of the Birth Certificate issued by the



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Registrar of Birth and Death, Kalakanmoi by registration, dated 23-03-2015. Though the petitioner was appointed as Assistant Director of Town and Country Planning on direct recruitment by TNPSC in July 2009, he was relieved from his earlier service with continuity of service with effect from 30-11-1989, from the date on which he was appointed as Assistant Draughtsman. Having not relinquished his continuity of service with effect from 30-11-1989, when he joined as Assistant Director of Town and Country Planning in July 2009, in that case the impugned order of rejection, dated 29-09-2015 passed by the respondent, rejecting the petitioner's claim for alteration of date of birth for not being made within a period of five years from the date of his original appointment as Assistant Draughtsman with effect from 30-11-1989, is within the parameters of the rule 49 of the Tamil Nadu State and Subordinate Service Rules. When the aforesaid rule mandates that 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, in that case the respondent's rejection of the petitioner's application for the reason that the said application is not made within five years of entry into service cannot be interfered.



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22. Even assuming that the contention of the learned Senior Counsel that the petitioner's date of appointment should be reckoned with effect from 08.07.2009 i.e, the date on which he was appointed as Assistant Director without conceding, even then the petitioner's writ petition is hit by latches and delay. Date of the impugned order is 29.09.2015. The petitioner is due to retire on attaining superannuation on 31.07.2024. Having slept over his rights all these years, even after a period of eight years from the date of impugned order, dated 29.09.2015 at the verge of his retirement, the petitioner has filed this writ petition.

23. The Hon'ble Apex Court in the case of ***State of Tamil Nadu Vs. T.V.Venugopalan*** reported in ***1994 (6) SCC 302*** has dealt with a similar case and the relevant portion of which is extracted as follows:

“7....This Court has, repeatedly, been holding that the inordinate delay in making the application is itself a ground for rejecting the correction of date of birth. The government servant having declared his date of birth as entered in the service register to be correct, would not be permitted at the fag end of his service career to raise a dispute as regards the correctness of the entries in the service register. It is common phenomenon that just before superannuation, an application would be made to the Tribunal or Court just to gain time to continue in service and the Tribunal or



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Courts are unfortunately unduly liberal in entertaining and allowing the government employees public employees to remain in office, which is adding an impetus to resort to the fabrication of the record and place reliance thereon and seek the authority to correct it. When rejected, on grounds of technicalities, question them and remain in office till the period claimed for, gets expired. This case is one such stark instance. Accordingly, in our view, the Tribunal has grossly erred in showing overindulgence in granting the reliefs even trenching beyond its powers of allowing him to remain in office for two years after his date of superannuation even as per his own case and given all conceivable directions beneficial to the employee. It is, therefore, a case of the grossest error of law committed by the Tribunal which cannot be countenanced and cannot be sustained on any ground. ”

24. The Hon'ble Apex Court in yet another case of ***R & M Trust Vs. Koramangala Resi. Vigilance Group & others*** reported in ***AIR 2005 Supreme Court 894*** has dealt with a similar case and the relevant portion of which is extracted as follows:

“There is no doubt that delay is a very important factor while exercising extraordinary jurisdiction under [Article 226](#) of the Constitution. We cannot disturb the third party interest created on account of delay. Even otherwise also why Court should come to rescue of person who is not vigilant of his rights?”.



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25. Appreciating the petitioner's *lis* in hand, by which he is trying to extend his service by backdoor for more than three years at the fag end of his retirement would certainly deprive the career progression of his colleagues working in the office of the respondent. The power of the High Court under Article 226 of the Constitution of India has to be exercised judicially and reasonably without any controversy. Persons seeking relief against the State under article 226 of the Constitution of India, be their citizens or otherwise, cannot get discretionary relief obtainable unless they fully satisfy the High Court that the facts and circumstances of the case clearly justifies the laches or undue delay on their part in approaching the Court for grant of such discretionary relief.

26. In the case in hand, the petitioner has miserably failed to explain the delay in approaching this Court even after a period of 8 yeras from the date of issuance of the impugned order, dated 29.09.2015. Considering such laches and undue delay, I am not inclined to interfere with the impugned order of the respondent.



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27. Accordingly, this Writ Petition stands dismissed. No costs.
Consequently, connected Miscellaneous Petitions are closed.

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NCC : Yes / No
Index : Yes / No
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To

The Commissioner of Town and Country Planning,
No.608, Anna Salai,
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L.VICTORIA GOWRI, J.

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