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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.02.2025

CORAM:

THE HONOURABLE MR JUSTICE C.V. KARTHIKEYAN

W.P.No.39059 of 2024 and
W.M.P. No.42307 of 2024

T. Palani ... Petitioner

vs

1. Tamil Nadu Khadi and Village Industries Board,
   Represented by its Chief Executive Officer,
   Kuralagam, Chennai 600 104.

2. The Assistant Director,
   Tamil Nadu Khadi and Village Industries Board,
   Chennai 600 104.

3. Commissioner of Revenue Administration,
   Ezhilagam, Chepauk,
   Chennai 600 005. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of certiorarified Mandamus calling for the records relating to memorandum bearing No. Na.Ka.No.659/2024/A1 dated 11.12.2024 issued by the 2nd respondent in view of the proposed retirement of the petitioner on 28.02.2025 on the basis of his date of birth entered in the Service Register i.e. 03.02.1965 which is contrary to Section 59(2) of the Tamil Nadu Government Servants (Conditions of

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Service) Act, 2016, quash the same and consequentially direct the 1st respondent to forward the application dt. 30.01.2023 of the petitioner for alteration of his date of birth to the 3rd respondent as prescribed under Section 59(2) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and to permit the petitioner to continue in service till he completes 60 years on 31.01.2026 on the basis of his correct date of birth which is 04.01.1966 as per the birth certificate issued by the Sub-Registrar, Poonamallee, under the Registration of Birth & Death Act, 1969.

For Petitioner	:	Ms. Anna Mathew
For R1 & R2	:	Mr. C. Rajakumar
R3	:	No appearance

ORDER

This Writ Petition has been filed in the nature of a certiorarified Mandamus seeking records relating to the order of the second respondent dated 11.12.2024 in Na.Ka.No.659/2024/A1, according to which, a communication was issued to the petitioner that since he has to retire owing to attaining the age of superannuation on 28.02.2025 and a no objection certificate should be obtained relating to his conduct and whether any criminal cases are pending against him for the purpose of preparing the pension and other aspects. The petitioner has taken umbrage over the stand of the respondent that he has to retire on

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28.02.2025 on attaining the age of superannuation. According to him, he has a right to continue his employment till 31.01.2026 as he was born on 04.01.1966.

2. It is informed to this Court that the petitioner had an extremely interesting career with the respondent. He initially joined service in the year 1988 under the first respondent in Guindy as a carpenter on piece rate basis. He claimed a right to be considered to be brought into the regular employment on permanent basis owing to his completion of 480 days of continuous employment. He raised a dispute in ID No.489 /2004 along with other similarly placed workmen. The Labour Court passed an Award on 25.07.2008 holding that the petitioner was entitled to be brought into regular service as a permanent employee.

3. The first respondent questioned the Award of the Labour Court and filed a writ petition and went on to appeal and further appeal to the Supreme Court. It is contended that the Award of the Labour Court was upheld right through. The respondents naturally had to reinstate the petitioner into service and also to consider him as a permanent employee. In this connection, they issued official proceeding on 11.01.2023 in

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Na.Ka.No.8926/2003/V1 (1) wherein after extracting the Award passed, it had been stated that the petitioner was brought into permanent service and in that order which was passed with respect to totally 19 similarly placed workmen, the petitioner was stated to have been born on 03.02.1965. The date of joining in service was given as 1988 and it was stated that the petitioner was brought into permanent service on and from 01.01.1991. Immediately thereafter, the petitioner had raised an objection though a representation dated 30.01.2023 claiming that he should be considered as having born on 04.01.1966.

4. In this connection, learned counsel for the petitioner placed reliance on the document of the respondent concerned dated 30.09.2022 in Na.Ka. No.8526/2003/V1(1) wherein the petitioner was categorised as having been born on 04.01.1966.

5. It is thus seen that in the records of the first respondent, the petitioner had been categorised as having been born on two separate dates, on 04.01.1966 and on 03.02.1965. The petitioner had consistently claimed that his date of birth was 04.01.1966.

6. The respondent relied on the school certificate issued on his

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completing 10th standard, wherein, the date of birth of the petitioner was given as 03.02.1965. On the other hand, the petitioner placed reliance on the date of birth as given in the Aadhar card, PAN card and such other documents.

7. But, one particular document which is quite pertinent to determine the issue would be the certificate of Birth issued under Section 12 of the Registration of Birth and Death Act, 1969. In this particular document, the date of birth of the son of Thangavelu Asari and Lakshmi who was born at Maternity Home, Kattupakka and registered as document No.18/1966, was given as 04.01.1966. The birth was registered on 15.04.1996. This was registered on the information given not by the parents but on an intimation received from the hospital, namely, Maternity Home at Kattupakkam. This is the primary document to determine the date of birth of any particular individual. The hospital records would show that Lakshmi had given birth to a son on 04.01.1966. This record will have to be taken as being the correct source of information with respect to the date of birth of the petitioner herein.

8. The other documents which reflect the date of birth, namely, the

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school certificate, Aadhar Card, PAN card and such other documents would be on the basis of information given either by the parents at the time of admission to the school or by the petitioner herein at the time of applying for Aadhar or PAN card. The earliest document is the certificate of Birth issued under the Registration of Birth and Death Act, 1969, which is issued under Section 12 of the Act.

9. The learned counsel for the petitioner pointed out that the first respondent is bound to apply the Tamil Nadu Government Servant Conduct Rules with respect to their employees and in this connection, further pointed out that under Section 59 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 if there is a claim that the date of birth should be corrected in the records of the employer, such an application should be given within 5 years of the same being brought to the notice to the employee and when a representation of such nature is given, an obligation is placed on the employer to forward it to the Commissioner of Revenue Administration to conduct an investigation by an officer not below the rank of Deputy Collector. Thereafter, a decision should be taken whether to alter the date of birth or not. The learned counsel therefore contended that it was incumbent on the part of the first

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and second respondents to forward the representation given by the petitioner to the third respondent for enquiry.

10. The third respondent, Commissioner of Revenue Administration, Chennai, is directed to, on receipt of such an intimation from the first/second respondent, conduct necessary enquiry through an officer holding the post not below the rank of Deputy Collector. While conducting such an enquiry, the petitioner and also the respondents are permitted to submit documentary evidence and also written submissions and liberty of hearing shall also be given to the petitioner/representative of the petitioner. Necessary orders in this regard must be passed within a period of three months from the date of receipt of intimation from the first/second respondent to the third respondent.

11. The learned counsel for the petitioner then pointed out that it is the stand of the respondents that the petitioner has to retire on attaining the age of superannuation on 28.02.2025 and that it would cause much prejudice to the petitioner if it is actually found that he was born on 04.01.1966.

12. In such circumstances, it is further directed that the petitioner's

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service must be extended till the completion of the enquiry by the third respondent and, subject to the findings of the third respondent, appropriate orders shall be passed by the first / second respondent.

13. With the above directions, this Writ Petition stands allowed. No costs. Consequently connected miscellaneous petition is closed.

17.02.2025

Internet : Yes / No
Index: Yes / No
Speaking order / Non speaking order
Bga

To

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