

W.A.(MD)No.1229 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 14.02.2025

CORAM:

THE HONOURABLE **MRS JUSTICE J. NISHA BANU**
and
THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

W.A(MD)No.1229 of 2024
and
C.M.P.(MD)No.9405 of 2024

1.The State of Tamil Nadu,
Represented by its Secretary to Government,
Education Department, Secretariat,
Fort St. George, Chennai.

2.The Director of School Education,
College Road, Nungambakkam,
Chennai – 600 006.

3.The Chief Educational Office,
Tuticorin District,
Tuticorin.

4.The District Educational Officer,
(Higher Secondary Schools),
Tiruchendur, Tuticorin District,
Tuticorin.

... Appellants

Vs.

1.C.Bai

2.The Account General (A&E),
Office of the Account General,
No.361, Annasalai,
Teynampet, Chennai – 600 018.

3.The Correspondent,
T.D.T.A.Pulamadan Chettiar



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National Higher Secondary School,
Sathankulam, Tuticorin District.

4.The Manager, (Higher Secondary School),
Thoothukudi -Nazareth Diocese,
Thoothukudi.

5.The Commissioners of Revenue Administration,
Chepauk, Chennai – 5.

6.The District Collector,
Thoothukudi District,
Thoothukudi.

7.The Revenue Divisional Officer,
Tiruchendur,
Thoothukudi District.

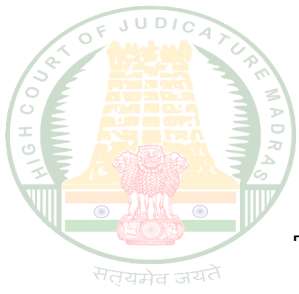
... Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD).No.14406 of 2020, dated 05.04.2023.

For Appellants	:Mr.J.Ashok Additional Government Pleader
For R1	:Mr.G.Prabhu Rajadurai
For R2	:Mr.P.Gunasekaran
For R3 to R4	:Mr.T.A.Ebenazar
For R5 to R7	:M/s.D.Farjana Ghoushia Special Government Pleader

JUDGMENT

(Judgment of the Court was delivered by **S.SRIMATHY, J.**)



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The present writ appeal is filed by the respondents 1,2 and 3, 4 in the writ petition against the order dated 05.04.2023, passed in W.P.(MD).No.14406 of 2020.

2. The writ petition was filed for writ of Certiorarified Mandamus to quash the proceedings dated 28.05.2020 passed in Moo.Mu.No.539/Aa3/2020 by 4th respondent and the proceeding dated 06.02.2020 in Na.Ka.No.951/Aa4/2024 passed by the 5th respondent and consequently direct the respondents to pay monthly salary with increments from 01.04.2014 to 31.05.2017 for 38 months along with provident fund, gratuity, un-availed earned leave surrender, other pensionary benefits as well as monthly pension and all other monetary benefits by considering to correct date of birth as 14.09.1958.

3. After considering the same, the writ petition is allowed. Aggrieved over the same, the present writ appeal was filed.

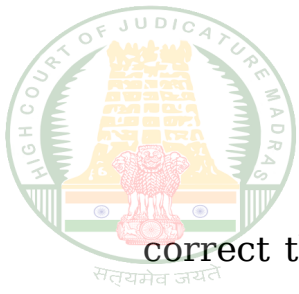
4. The brief facts as stated in the affidavit filed along with the writ petition in W.P.(MD)No.14406 of 2020 are that the petitioner's parents namely Vethakan and Kamalam was married on 12.09.1957 and the petitioner was born on 14.09.1958. However, the date of birth



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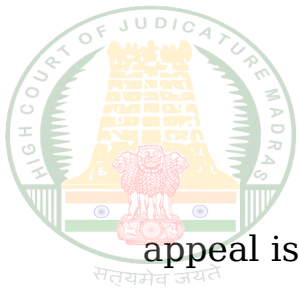
was wrongly entered as 24.03.1956. The petitioner was appointed as

WEB a Post Granulate teacher on 18.06.1966 in Samariah St.John's Higher Secondary Schoool, Thisayanvilai. After entering the service immediately the writ petitioner had submitted a representation on 26.09.1996 to the correspondent of the Samariah St.John's school seeking to alter the correct date of birth. Subsequently, the petitioner was transferred to the 6th respondent school on 03.06.1997. Since there was no response, the petitioner has issued legal notice on 23.02.1998. Since none of the respondents came forward to rectify the said mistake of wrong date of birth in the records, the petitioner had filed suit in O.S.No.311 of 1998 on the file of Principal District Munsif Court, Thiruchendur seeking declaration and mandatory injunction. The said suit was subsequently transferred to District Munsif, Sathankulam and renumbered as OS.47 of 2001. After an elaborate trial, the suit was decreed on 29.01.2010 and the date of birth was declared as 14.09.1958 and direction was issued. The respondents have not preferred any appeal and the same has attained finality. Since the judgment was not implemented, the petitioner has submitted representations on 02.08.2010, 24.08.2010, 26.09.2011 and also sent legal notice on 15.03.2012. Thereafter the petitioner had filed W.P.(MD)1900 of 2014, inter alia praying for Mandamus to



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correct the date of birth. In M.P.No.1 of 2014 in W.P.(MD)No.1900 of 2014, the Hon'ble Court restrained the respondents from relieving the petitioner from service. Based on the interim order, the petitioner was permitted to continue the work but without salary and she had completed her service until superannuation on 13.06.2016. The petitioner prayed for reemployment till the end of academic year i.e., 31.07.2017 but the same was not granted. Again, the petitioner filed a writ petition in W.P.(MD)No.18549 of 2016, with the prayer to grant extension and re-employment till 31.07.2017. And based on the interim order, the petitioner continued reemployment service. Thereafter, the said petition was disposed of with certain directions. The writ petition in WP.(MD)No.1900 of 2014 was also disposed of with directions. Based on the direction, the petitioner submitted detailed representation for changing the date of birth. But the respondents had rejected the prayer vide order dated 28.05.2020 and 06.02.2020 and the same was challenged in the present writ petition. The respondents are also filed detailed counter in the writ petition. After elaborately considering the prayer of the writ petitioner, the Writ Court had allowed the writ petition and directed the respondents to change the date of birth in the service records and also directed to grant all the benefits. Aggrieved over the same, the present writ



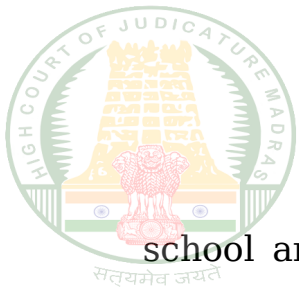
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appeal is filed.

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5. The present writ appeal is filed raising various grounds. After considering the rival submissions this court has given its anxious consideration.

6. The primary contention of the Appellant/respondent is that the writ petitioner was appointed on 18.06.1996 and has submitted an application dated 26.09.1996 to the Correspondent T.D.T.A. Schools. The petitioner had not filed any application to the educational authorities. Hence, the said application cannot be considered as application submitted within time. Further the petitioner had stated she has submitted an application on 29.07.1998 and the respondent directed to submit evidence to prove that she had submitted application to the competent authority within a period of 5 years. But the petitioner failed to submit any evidence, when there is no record for the said averment, the plea of the writ petitioner is barred by limitation. The petitioner had filed a suit to change the date of birth but the concerned Educational Authorities were not parties in the suit. Further, as per Subsidiary Rule 5, any application for alteration will not be entertained after the student had completed the

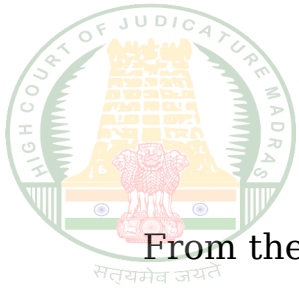


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school and applied for SSLC public examination. The petitioner has submitted an application on 02.08.2010 and the same is submitted after lapse of so many years. Therefore, the writ petitioner has submitted belated application beyond 5 years and the said application cannot be considered.

7. It is seen from the judgement passed in O.S.No.311 of 1998, that the Director of School Education, Nungambakkam, Chennai is the 1st defendant. Therefore, the plea of the appellant that Education Department was not a party in the suit is incorrect.

8. Further in the suit a finding is rendered by a civil court, that the writ petitioner has submitted an application to the 1st defendant/ Director of School Education and the 2nd defendant /District Collector a notice dated 22.08.2022 under section of Civil Procedure Code. The first defendant on receipt of the said notice had directed the writ petitioner to submit further details, vide letter dated 29.04.1998. The writ petitioner had submitted the further details through registered post alone with acknowledgement cared on 06.09.1998. Thereafter the 1st defendant Director of School education, had rejected the writ petitioner's claim vide order dated 01.09.1998.



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From the above facts it is evident that the 1st respondent had received an application on 23.09.1998, which is well within 5 years period which is the time prescribed to change the date of birth. Therefore, this Court is of the considered opinion that the application was submitted within five years from the date of joining the service.

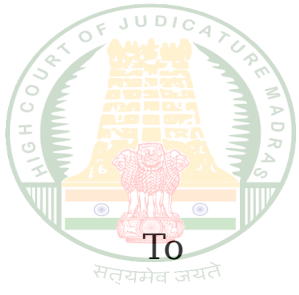
9. The Writ Court had rightly considered the claim of the writ petitioner right from the marriage of writ petitioner parents. Further the Court had considered all relevant certificates, thereafter allowed the writ petition and there is no infirmity in the order.

10. The appellant has not raised any legally sustainable ground. Therefore, this court is dismissing the writ appeal, and the order passed in the writ petition is confirmed by this Court. Connected Miscellaneous Petition is closed. No costs.

[J.N.B., J.] [S.S.Y., J.]
14.02.2025

Index : Yes / No

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