
(2008) 03 MAD CK 0113
In the Madras High Court
Case No : Writ Petition No. 29202 of 2005

P. Ramasamy

APPELLANT

Vs

The Government of Tamil Nadu

RESPONDENT

Date of Decision : 05-03-2008

Acts Referred:

Evidence Act, 1872 — Section 32(5)

Tamil Nadu State and Subordinate Services Rules, 1955 — Rule 49A

Citation : (2008) 03 MAD CK 0113

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : M. Ravi, for the Appellant; S. Gopinathan, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

N. Paul Vasanthakumar, J.—Prayer in the writ petition is to quash the order dated 8.4.1992 and 22.12.1994 passed by the second and first respondent respectively with a direction to the respondents to alter the date of birth of the petitioner in the service register as 5.4.1950 instead of 9.6.1948 and confer all consequential benefits.

2. The petitioner joined in the Government service as Sub-Registrar in the Registration Department on 22.10.1977 and was promoted as District Registrar on 1.2.1992. The case of the petitioner is that at the time of joining in service his date of birth was wrongly entered in the service register based on the entry made in the SSLC book and within five years of entry into service, he applied for alteration of the date of birth by submitting representation dated 6.5.1992. The said request was rejected on the ground that when compared with the birth certificate submitted by the petitioner with the original register maintained by the registration department, it was found that the name of "Arjunan" was found written and the same was scored, authenticated and the name of the petitioner "Ramasamy" was found substituted. Petitioner preferred appeal before the first respondent, which was also dismissed by order dated 22.12.1994. Hence the

petitioner has filed the original application before the Tribunal, which is now transferred to this Court.

3. The grounds stated in the affidavit to challenge the impugned order are that in spite of producing documentary proof within the time as required under Rule 49A of the Tamil Nadu State and Subordinate Service Rules, the second respondent erroneously rejected the same on the basis of correction in the birth register, which was also authenticated and the correction was made to include the name of the petitioner, which was changed from Arjunan to Ramasamy. The report of the Revenue Divisional Officer, who enquired into the matter was not duly considered.

4. The respondents have filed counter affidavit contending that the application submitted by the petitioner for correction of date of birth was entertained and the Principal Commissioner and Commissioner of Revenue Administration forwarded the application to the Revenue Divisional Officer, Salem, for conducting enquiry and after the receipt of enquiry report the matter was enquired by the Principal Commissioner and he sent a report to the Inspector General of Registration to pass orders on the application. After examining the report, by order dated 6.5.1992, the Inspector General of Registration, who is the appointing authority rejected the said application. Petitioner again submitted a representation on 11.6.1992 before the second respondent to reconsider his request, which was again rejected by order dated 12.12.1994. In the counter affidavit it is further stated that except the birth extract, no other evidence was produced, like the statement from the father of the petitioner at whose instance the date of birth was given to the school authority, wherein the date of birth of the petitioner is mentioned as 9.6.1948 and the said SSLC certificate being the primary evidence and the birth extract having raised doubt due to the correction made in the name, the request of the petitioner was rejected by the department.

5. The learned counsel for the petitioner argued that on 28.1.1949 triple children born to the petitioner's parents for which also birth extract is available and 28.1.1949 being the date of birth of the triple children, there is no possibility of giving birth to the petitioner on 9.6.1948 and therefore there is a presumption in favour of the petitioner that his date of birth is 5.4.1950. The learned counsel also submitted that the correction in the birth register is only change of name and it will not materially affect the date of birth of the petitioner and therefore the respondents ought not to have rejected the request of the petitioner on mere suspicion. The learned counsel also submitted that the petitioner was not allowed to retire on 30.6.2006 by issuing G.O.(2D) No. 76, Commercial Taxes and Registration Department, dated 30.6.2006 due to the pendency of grave charges and if the writ petition is allowed, he could continue in service till 30.4.2008.

6. The learned counsel for the respondents on the other hand submitted that the correction sought for by the petitioner could not be acceded to as the petitioner has not proved beyond doubt or with unimpeachable evidence that his date of birth is 5.4.1950 and not on 9.6.1948. The learned counsel also submitted that

no oral evidence was adduced by the petitioner to prove that the date of birth of the triple child of the petitioner's parents was really 28.1.1949 and there may be mistake in recording the said date of birth also and in the absence of any corroborative evidence, the same cannot be the only reason to presume that the petitioner's date of birth is 5.4.1950 and not on 9.6.1948.

7. I have considered the rival submissions made by the learned counsel for the petitioner as well as the respondents.

8. Admittedly petitioner's date of birth is entered in the SSLC certificate as 9.6.1948. The said date was given by the petitioner's father viz., Perumal. Petitioner passed SSLC in April, 1968. There is no evidence to show that the petitioner's father gave wrong date of birth in the SSLC book. The entry made in the SSLC book was on the basis of the information supplied to the School authority by the father, which is more authentic evidence u/s 32(5) of the Indian Evidence Act. Petitioner has not discharged his duty by proving the fact that the petitioner's father gave the date of birth mistakenly and in the absence of any such material evidence through persons having special means of knowledge, petitioner is not entitled to claim that the entry made in the SSLC Book is not conclusive proof of his date of birth.

9. As rightly contended by the learned counsel for the respondents, the triple child said to have born to the petitioner's parents on 28.1.1949 is also not proved by any other material other than the entry made in the birth register. If the petitioner has furnished any other supporting evidence to substantiate his contention that triple children were born on 28.1.1949 to the petitioner's parents then the petitioner's contention that he could not have born on 9.6.1948 can be accepted. Still, the date of birth of the petitioner as claimed by the petitioner as 5.4.1950 has to be established through other evidence. Petitioner has failed to adduce any such oral evidence from persons having special knowledge, who alone can remember the date of birth correctly in terms of Section 32(5) of the Indian Evidence Act. The Supreme Court in the decision reported in State of Punjab Vs. Mohinder Singh, considered a similar issue and in paragraph 12 held thus,

12. On the contrary, the statement contained in the admission register of the school as to the age of an individual on information supplied to the school authorities by the father, guardian or a close relative is more authentic evidence u/s 32 Clause (5) unless it is established by unimpeachable contrary material to show that it is inherently improbable. The time of one's birth relates to the commencement of one's relationship by blood and a statement therefore of one's age made by a person having special means of knowledge, relates to the existence of such relationship as that referred to in Section 32 Clause (5).

10. The birth extract relied on by the petitioner is also having correction and therefore the respondents disbelieved the same and the same cannot be treated as perverse decision. It is well settled as of now in the matter of alteration of

date of birth that the person, who seeks alteration of date of birth other than the one recorded in the school certificate should prove the same beyond reasonable doubt with concrete and unimpeachable evidence. Here the only document produced is birth extract that too raises suspicion. Hence the respondents are justified in rejecting the request of the petitioner.

There is no merit in the writ petition and the same is dismissed. No costs.