

(2009) 09 MAD CK 0298

In the Madras High Court

Case No : Writ Petition (MD) No. 5410 of 2009 and M.P. (MD) No. 1 of 2009

S.K. Thangam

APPELLANT

Vs

The District Treasury Officer, District Treasury Office, The
Commissioner, Treasuries and Accounts Department and The
Sub Pay and Account Officer, Sub Pay and Account Office,
Madurai Bench of Madras High Court

RESPONDENT

Date of Decision : 16-09-2009

Acts Referred:

Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 — Rule 49

Citation : (2009) 09 MAD CK 0298

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : S. Ramasamy, for the Appellant; K. Balasubramanian, Additional
Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Ramanathan, J.—Heard both sides.

2. The petitioner filed the above writ petition to rectify the date of birth in her service register from 16.08.1951 to 16.08.1956. The petitioner was initially appointed as Junior Assistant in the District Treasury Office, Madurai on 09.01.1985 as she was selected in the examination conducted by the Tamil Nadu Public Service Commission. Thereafter, she was promoted as Accountant and transferred to District Treasury Office, Virudhunagar in the year 1990 and now, she is working as Superintendent in the office of the 3rd respondent.

3. According to the petitioner, her correct date of birth is 16.08.1956 and her date of birth was wrongly entered in the Secondary School Leaving Certificate as 16.08.1951 and on 04.07.1989, on coming to know that her date of birth as found in the Secondary School Leaving Certificate book was wrong, she gave representation to the 1st respondent, by disclosing the correct date of birth and that application was made within five years from the date of joining and

according to her, in response to her letter, dated 04.07.1989, the first respondent sent reply to her, asked to produce the certified documents and those documents were also furnished by her and no action was taken on her representation. Therefore, she sent another representation, dated 23.07.2007 enclosing all the certificates, to the 2nd respondent and that was refused by the 2nd respondent.

4. It is the further case of the petitioner that the fact she had sent the letter, dated 04.07.1989 is confirmed by the letter of the first respondent, dated 09.03.1990 wherein she was directed by the 1st respondent to produce the birth certificate and hence, she made necessary representation within a period of 5 years as per Rule 49(b) of the Tamil Nadu Subordinate Service Rules. She further stated that she filed a suit O.S. No. 821 of 2007 on the file of the Principal District Munsif, Madurai, for alteration of her date of birth and the suit was dismissed and the judgment and decree was also confirmed in the 2nd appeal in A.s. No. 14 of 2009, on the file of the I Additional Sub Court, Madurai.

5. According to her, the suit and the appeal were dismissed due to non-production of the copy of the application, dated 04.07.1989 and as per the transfer certificate issued by the Palani Junior Basis School, Vaithilingapuram Post, Srivilliputhur, her correct date of birth is only 16.08.1956 and therefore, in the service record, her date of birth must be altered to 16.08.1956 and as the respondents did not take any decision, on the basis of the records of the school where she was studied, the writ petitioner is filed by the petitioner.

6. The 2nd respondent has filed the counter affidavit refuting the allegations made by the petitioner in the representation. It is specifically stated in the counter affidavit that the petitioner had not raised any objection regarding the date of birth and the respondents have not received any representation alleged to have been sent on 04.07.1989 by the petitioner. Further the reply alleged to have been sent by the 1st respondent on 09.03.1990 to the representation of the petitioner, dated 04.07.1989 was also disputed and it has been stated that having regard to the reference given in that memo, dated 09.03.1990 and due to the other reasons stated in para 9 of the counter affidavit, the reply dated 09.03.1990 could not have been issued by the first respondent and it must have been created for the case. It is further stated in the counter affidavit that having regard to the Rule 49 of the Tamil Nadu State and Subordinate Service Rules, it is incumbent for the petitioner to apply for changing of date of birth within 5 years from the date of joining in service and in this case she made the representation at the far end of her career, as she was to retire on 31.08.2009.

7. Mr. S. Ramasamy, the learned Counsel appearing for the petitioner strenuously contested that the petitioner had sent representation on 04.07.1989 for alteration of her date of birth and that was proved by the letter of the 2nd respondent, dated 09.03.1990 and therefore, it cannot be disputed that the petitioner had made the representation within a period of five years from the date of joining and thus satisfied the Rule 49(b)(c).

8. He further submitted that the delay on the part of the respondents in not considering the petitioner's representation cannot be considered against the petitioner and as the respondents failed to correct the date of birth at an earlier point of time, she has approached this Court as a last resort.

9. The learned Additional Government Pleader, Mr. Balasubramanian, contended that the petitioner cannot be shown any lenience as she has created the records to suit her case. He further submitted that in the judgment rendered in O.S. No. 821 of 2007 and A.S. No. 14 of 2009, a specific finding has been given that the petitioner could not have given her representation, dated 04.07.1989 for correcting of her date of birth, as she came to know about the wrong entry in the date of birth after she got the school transfer certificate, which was in 2007.

10. In the plaint in O.S. No. 821 of 2007, she has stated that she got the elementary school certificate only in March 2007 and she filed the suit for the relief prayed for in that suit.

11. Therefore, according to the petitioner, she got the elementary school certificate, which according to her, recorded the correct date of birth as 16.08.1956 and from that only, she came to know about the wrong date of birth mentioned in the S.S.L.C. book as 16.08.1951. If that is true, she could not have made the representation on 04.07.1989 as stated by her, as admittedly, she had no other proof to prove her alleged correct date of birth 16.08.1956, except the records sheet issued by the elementary school authorities, which according to her was made available only in 2007.

12. Admittedly, even according to the petitioner, except the elementary school records sheet, which was marked as Ex.A1 in O.S. No. 821 of 2007 on the file of the Principal District Munsif, Madurai town, she has no other document to prove that her date of birth is only 16.08.1956 and not 16.08.1951. As stated supra, this certificate she got only in the year 2007. Therefore, the allegation that she has sent representation on 04.07.1989 and reply was sent by the 2nd respondent dated 09.03.1990 asking her to produce the document and in response to that, she produced the documents cannot be true and according to me, it would only falsify the case of the petitioner. As a matter of fact, the learned District Munsif and the learned Subordinate Judge have elaborately discussed about the genuineness of the record sheet issued by the elementary school and gave a specific finding that Ex.A1, Record sheet, has been deliberately created for the purpose of this case and cannot be relied upon and I agree with that finding.

13. Further the courts below also held that the representation alleged to have been sent on 4.07.1989 cannot be proved, having regard to the fact that she got the record sheet only in the year 2007 and according to the petitioner, she came to know the correct date of birth from that document only. Therefore, it is true that the petitioner has not sent the representation within a period of five years as per rules.

14. The power of the Court to alter the date of birth in respect of Government servant is no long res-integra and following from Union of India Vs. Harnam Singh, , Union of India and others Vs. Kantilal Hematram Pandya, and National Airport Authority Vs. M.A. Wahab, , our Honourable Supreme Court held that the alteration of date of birth at the fag end of the carrier cannot be encouraged.

15. Further, in the judgment reported in 2007 (7) MLJ 657, in the matter of State of Gujarat and Ors. v. Vali Mohmed Dosabhai Sindhi, the Honourable Supreme Court declined to alter the date of birth after the period of 5 years from the date of joining in service following the judgments referred hereunder. ". Secretary and Commissioner, Home Department and others Vs. R. Kirubakaran, .

In State of T.N. Vs. T.V. Venugopalan, and State of Orissa and others Vs. Ramanath Patnaik, .

16. The same principle was followed by Justice Mr. M. Jaichandran, in the judgment reported in 2008(7) MLJ 1004 in the case of C. Elangovan v. Director of School Education, Madras and by Justice Mr. N. Paul Vasanthakumar, in the reported judgment in 2008(5) CTC 170 in the case of A. Rajagopalan v. The Registrar, University of Madras, Chepauk, Chennai-5. In the reported judgment in 2008(5) CTC 170 all the judgments on this subject has been discussed and the same principle was also discussed by the Division Bench of this Court in the reported judgment (2009) 1 MLJ 1 in the case of Government of Tamil Nadu, rep. by Secretary to Government, Animal Husbandry, Dairying and Fisheries Department, Chennai and Anr. v. S.K. Subbiah. Hence, the request of the petitioner to alter the date of birth cannot be entertained.

17. Further in this case, the petitioner filed a suit for altering the date of birth and that was also dismissed and hence, she is bound by the judgment and the decree, which has become final.

18. Hence, I do not see any merit in the writ petition and the writ petition is dismissed. Consequently, connected Miscellaneous Petition is also dismissed. No costs.