

Manoj Vs. State of Kerala

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Court : Kerala

Decided On : Feb-18-2014

Judge : Honourable Mr.Justice N.K.Balakrishnan

Appellant : Manoj

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI TUESDAY, THE 18TH DAY OF FEBRUARY 2014 29TH MAGHA, 1935 WP(C).No. 15169 of 2013 (U) ----- PETITIONER : ----- ANTONY M.P., MOOLANVEEDU, MURIKKUNGAL P.O., THRISSUR - 680 699. BY ADVS.SRI.V.SHYAM SRI.P.ARUN RESPONDENT(S): ----- 1. THE JOINT COMMISSIONER FOR GOVERNMENT EXAMINATIONS, THIRUVANANTHAPURAM.

2. STATE OF KERALA, REP. BY THE SECRETARY TO GENERAL EDUCATION DEPARTMENT, THIRUVANANTHAPURAM.

3. THE STATE PUBLIC INFORMATION OFFICER, THE OFFICE OF THE EXAMINATION COMMISSIONER, PARISHA BHAVAN, POOJAPURA, THIRUVANANTHAPURAM. BY GOVERNMENT PLEADER SRI.R.RANJITH THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18-02-2014, THE

COURT ON THE SAME DAY DELIVERED THE FOLLOWING: sts WP(C).No. 15169 of 2013 (U) ----- APPENDIX PETITIONER(S)' EXHIBITS ----- EXHIBIT-P1- TRUE COPY OF THE BIRTH CERTIFICATE DATED 18.01.2007 ISSUED FROM REGISTRARS OF BIRTHS AND DEATHS, PUDUKKAD EXHIBIT-P2- TRUE COPY OF THE BAPTISM CERTIFICATE DATED 03.07.2007 ISSUED FROM ST. JOSEPH CHURCH, MURIKKUNGAL. EXHIBIT-P3- TRUE COPY OF THE 3D PAGE OF PETITIONER'S S.S.L.C BOOK EXHIBIT-P4- TRUE COPY OF THE COVERING LETTER DATED 10.01.2008 OF THE HEADMISTRESS OF SREE KRISHNA HIGH SCHOOL. EXHIBIT-P5- TRUE COPY OF THE NO. K.DIS/EX/BB2/1867/CGE DATED 26.10.2009 OF THE 1ST RESPONDENT. EXHIBIT-P6- TRUE COPY OF THE LETTER NO.61554/G2/2010/G.EDN DATED 29.11.2010 OF THE 2ND RESPONDENT. EXHIBIT-P7- TRUE COPY OF THE

ORDER

NO. K.DIS/EX./BB4/19330/2009/CGE DATED 23.06.2009 OF THE 1ST RESPONDENT. EXHIBIT-P8- TRUE COPY OF THE LETTER NO. BB4/16523/2011/CGE DATED 11.04.2011 OF THE 3RD RESPONDENT. RESPONDENT(S)' EXHIBITS: NIL /TRUE COPY/ P.S.TO.JUDGE sts A.V.RAMAKRISHNA PILLAI, J ----- W.P.(C) No.15169 of 2013 ----- Dated this the 18th day of February, 2014

JUDGMENT

Ext.P5 order and Ext.P6 letter are under challenge.

2. The petitioner is a Government servant, who entered service on 10.7.2006 as Lower Division Clerk in Thrissur Municipality.

3. According to the petitioner, he was born on 15.1.1981 at the Government Hospital, Pudukkad as evidenced by Ext.P1 birth certificate dated 18.1.2007. According to him, he was baptized at St.Joseph Church, Murikkungal as evidenced by Ext.P2 dated 3.2.2007. However, when he joined the school, his date of birth was wrongly mentioned as 23.5.1980 and this was WPC No.15169/2013 2 recorded in his school records as evidenced by Ext.P3 SSLC

Book. When the petitioner became aware of this mistake, he submitted an application before the first respondent for correction of date of birth as contemplated under Chapter VI Rule 3 of the Kerala Education Rules.

4. The first respondent by Ext.P5 order rejected the petitioner's application on the ground that if the request is allowed, he would become an under aged student at the time of admission in Standard I which would go against Rule 5 of Chapter VI of KER.

5. The petitioner preferred an appeal before the second respondent as contemplated under Rule 3(3) of the Kerala Education Rules. However, by Ext.P6, the petitioner was intimated that the Government has decided that the decision of the first respondent would not be reconsidered at all. Thus, he has come up before this Court. WPC No.15169/2013 3 6. The respondent State has filed a detailed counter affidavit. In paragraph-5 of the counter affidavit it was averred that the procedure for correction of date of birth in school records and SSLC Book has been simplified by the Government vide G.O.(MS) No.853/2011/G.Edn. dated 1.3.2011 and G.O.(MS) No.2281/11/G.Edn.dated 18.6.2011 by the Government and the date of birth can be corrected in school records and SSLC Book on the strength of the certificate issued by the Local Self Government Department.

6. The reasoning in Ext.P5 that the applicant would become under aged student at the time of admission in Standard I in the event of correction does not hold in the light of the decision of this Court in *Kotnis v State of Kerala* (2010(4) KLT447 wherein it was observed that Rule 5 does not govern Rule 3 of KER and Rule 3 can be invoked to correct the date of birth and if an order is passed by the Commissioner to that effect, the correct date of WPC No.15169/2013 4 birth could be entered in the school records, notwithstanding that the result of such correction would disclose admission of pupil contrary to Rule-5. It was further observed that the maximum consequence that may occur on such correction would be denial of promotion as envisaged under Rule 10B.

7. Here, Rule 10B cannot be invoked as the applicant has completed his course and passed SSLC examination years back. In the light of the averment in paragraph 5 of the counter affidavit, this writ petition is disposed of directing the

second respondent to re-consider the case of the petitioner, in the light of the Government orders referred to in paragraph-5 of the counter affidavit as well as the proposition of law stated above and to pass fresh orders, after affording the petitioner an opportunity of being heard. This shall be done within a period of three months. To facilitate an early disposal, the petitioner WPC No.15169/2013 5 shall produce a copy of this judgment before the second respondent within one month.
sd/-A.V.RAMAKRISHNA PILLAI JUDGE css/ true copy P.S.TO JUDGE

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