

State of Kerala vs Shareef T. E.

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Court : Kerala

Decided On : Sep-03-2024

Judge : Honourable Mr. Justice Amit Rawal, Honourable Mr. Justice Easwaran S.

Appeal No. : WA/1136/2023

Appellant : State of Kerala

Respondent : Shareef T. E.

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR & THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P. WEDNESDAY, THE 5TH DAY OF JULY 2023 / 14TH ASHADHA, 1945 WA NO. 1136 OF 2023 AGAINST THE ORDER/JUDGMENT IN TWP(C) 8292/2021 OF HIGH COURT OF KERALA APPELLANTS/RESPONDENTS 1 TO 4 IN WP(C):

1 STATE OF KERALA REPRESENTED BY THE SECRETARY, GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - PIN-695 001. 2 THE DIRECTOR OF GENERAL EDUCATION DIRECTORATE OF GENERAL

EDUCATION, THIRUVANANTHAPURAM, PIN - 695014 3 REGIONAL
DEPUTY DIRECTOR HIGHER SECONDARY EDUCATION, REGIONAL
OFFICE, KOZHIKODE DISTRICT, PIN - 673004 4 ADDITIONAL
DIRECTOR OF GENERAL EDUCATION DIRECTORATE OF GENERAL
EDUCATION, THIRUVANANTHAPURAM DISTRICT, PIN - 695014 BY
SR.GOVERNMENT PLEADER SMT.VINITHA.B

RESPONDENTS/PETITIONER & 5TH RESPONDENT IN WP(C): 1
SHAREEF T. E., S/O. EBRAHIM T. A., WORKING AS HSST
ECONOMICS, SIR SYED HSS, KARIMBAM, THALIPARAMBA,
KANNUR DISTRICT, RESIDING AT THECHIYODAN HOUSE,
MAMPOIL, CHUNGATHARA P. O., MALAPPURAM DISTRICT, PIN -
679334 2 THE MANAGER SIR SYED HSS, KARIMBAM,
THALIPARAMBA, KANNUR DISTRICT, PIN - 670142 BY ADV
ANOOP.V.NAIR THIS WRIT APPEAL HAVING COME UP FOR
ADMISSION ON 05.07.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING: A.K.JAYASANKARAN NAMBIAR &
MOHAMMED NIAS C.P., JJ
----- WA No.1136 of 2023
----- Dated this the 5th day of July, 2023

JUDGMENT

Mohammed Nias.C.P.J.

**The State of Kerala and its officials are aggrieved by the
judgment**

**dated 21.7.2022 in WP(C)No.8292 of 2021 that set aside Ext.P5
order**

issued by the second appellant rejecting the request made by the writ petitioner for
correction of his date of birth.

2. The brief facts necessary for deciding the writ appeal are as follows:-

The respondent/writ petitioner is working as HSST Economics (Jr) in the school, where the second respondent is the manager. As per Ext.P1 proceedings issued by the third appellant, approval was granted to his appointment with effect from 3.6.2013 till the post exists. As the writ petitioner realised that an error had crept in the service records with regard to his date of birth, he made Ext.P2 application before the competent authority based on which the date of birth was corrected from 20.04.1982 to 05.03.1983, as is evident from Ext.P3, the endorsement made in the SSLC Book. The writ petitioner accordingly filed an application in tune with the Government Order for the corresponding correction of date of birth in the service book on 2.6.2018, which is within a period of five years from 3.6.2013, the date of entry into service. By Ext.P4 order, the petitioner's request was

rejected, holding that the time frame fixed as per the Government Order

expired on 10.04.2014, and therefore the request is belated.

3. A counter affidavit was filed on behalf of the third appellant

contending that the application preferred by the petitioner on 2.6.2018 was received in the office of the third respondent only on 14.6.2018, which is beyond the time stipulated under Ext.P4 Government Order, and that there was no reason for the petitioner to wait till 2.6.2018 to seek alteration of the Date of Birth when the SSLC Book was corrected as early as on 23.4.2018.

4. After hearing both sides, the learned single Judge found that

the writ petitioner's entry into service was on 3.6.2013, as is evident from Ext.P1, and that Ext.P4, the relevant Government Order says that the application for correction of Date of Birth of a Government employee has to be made within five years of one's entry in service. It is admitted in the counter affidavit of the appellant that the writ petitioner had filed the application before the Principal on 2.6.2018, which is within the time stipulated in Ext.P4. Thus, the learned single Judge found that Ext.P5, the order of rejection proceeds on the basis that the time limit for filing the application had expired on 10.4.2018, is factually wrong since the

petitioner made an application on 2.6.2018 itself. Thus, holding that Ext.P5 order of the second appellant cannot be sustained, a direction was issued to the said respondent to re- consider the application dated 2.6.2018 treating the same as well within time and pass orders expeditiously, in any event, within two months from the date of receipt of a copy of this judgment.

5. The State and its official filed this appeal against the said

judgment.

6. Learned Government Pleader submitted before us that the application of the petitioner could only be taken as made on 14.6.2018 as the office of the third appellant received the same only on that date,

and the same is forwarded to the Director of Higher Secondary Education to take steps. It is also argued that the writ petitioner's appointment as HSST Economics (Jr) was approved as early as 3.2.2013, and therefore he could have made the application well before

the last date. More so when the date of birth was corrected by order

dated 23.4.2018, the learned Government Pleader also relies on the judgments in Karnataka Rural Infrastructure Development Ltd v. T.P.Nataraja [2021 SCC online SC 767] and Union of India v. Harnam Singh [1993 (2) SCC 162] to submit that the application for change of date of birth can only be made as per the relevant provisions/regulations applicable and that even if there is cogent evidence, the same cannot be claimed as a matter of right. It is also argued on the basis of the above decisions that the Government servants must apply for a change of correction of the date of birth without any unreasonable delay. In the instant case, the relevant guidelines, Ext.P4, showed that the application has to be made within a period of five years, as has been done by the writ petitioner in the instant case and as rightly found by the learned single Judge. Nothing in the judgments noted above comes to the rescue of the appellant herein. The application of the writ petitioner was in accordance with the relevant guidelines, and there is no case for

the appellants that the writ

petitioner's application was not made on 2.6.2018. In such circumstances, we feel that the learned single Judge was justified in interfering with Ext.P5, the order of rejection passed by the second appellant. We find no merit in the writ appeal, and the same is accordingly dismissed. Sd/-A.K.JAYASANKARAN NAMBIAR, JUDGE Sd/-MOHAMMED NIAS C.P., JUDGE dlk 6.7.2023

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