

Usha Devi Vs. State of Kerala

Usha Devi Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/3368

Court : Kerala

Decided On : Nov-18-2014

Judge : Honourable Mr. Justice Dama Seshadri Naidu

Appellant : Usha Devi

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU TUESDAY, THE 18TH DAY OF NOVEMBER 2014 27TH KARTHIKA, 1936 WP(C).No. 22298 of 2013 (R)

----- PETITIONER(S): ----- USHA DEVI.K, WORKING AS KANNADA TRANSLATOR COURT OF CHIEF JUDICIAL MAGISTRATE, KASARAGOD RESIDING AT USHUS, KUDLU RD NAGAR P.O., KASARAGOD. BY ADV. SRI.SURESH KUMAR KODOTH RESPONDENT(S): ----- 1. STATE OF KERALA, REPRESENTED BY SECRETARY TO THE GOVERNMENT, DEPARTMENT OF GENERAL EDUCATION, THIRUVANANTHAPURAM-695 -001.

2. THE COMMISSIONER FOR GOVERNMENT EXAMINATIONS, POOJAPPURA, THIRUVANANTHAPURAM-695 001.

3. THE REGISTRAR (SUBORDINATE JUDICIARY), HIGH COURT OF KERALA, ERNAKULAM-682 031. R1 & 2 BY SENIOR GOVERNMENT PLEADER

SRI.V.VIJULAL R3 BY ADVS. SMT.V.P.SEEMANDINI (SR.) SRI.M.R.ANISON
THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18-11-
2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: PJ
WP(C).No. 22298 of 2013 (R) ----- APPENDIX
PETITIONER(S)' EXHIBITS ----- EXHIBIT P1. TRUE
COPY OF BIRTH CERTIFICATE DATED 31/3/2008. EXHIBIT P2. TRUE COPY OF
THE EXTRACT OF THE ADMISSION REGISTER ISSUED ON 3/9/2009. EXHIBIT
P3. TRUE COPY OF THE ADMISSION REGISTER EXTRACT DATED 4/9/2008.
EXHIBIT P4. TRUE COPY OF THE RELEVANT PAGE OF SSLC EXHIBIT P5.
TRUE COPY OF APPLICATION DATED 22/9/2008. EXHIBIT P6. TRUE COPY OF
REQUEST DATED 22/9/2008 TO HEAD MASTER. EXHIBIT P7. TRUE COPY OF
THE

ORDER

DATED 25/7/2013. EXHIBIT P8. TRUE COPY OF APPLICATION
DATED 27/11/2012. EXHIBIT P9. TRUE COPY OF THE PROCEEDINGS
DATED 13/2/2013. EXHIBIT P10. TRUE COPY OF APPLICATION
DATED 29/4/2013. EXHIBIT P11. TRUE COPY OF REPRESENTATION TO THE
CJM. EXHIBIT P12. TRUE COPY OF THE

ORDER

DATED 18/6/2013 ISSUED BY THE 3D RESPONDENT EXHIBIT P13. TRUE COPY
OF THE SAID G.O.(P)45/91/P7ARD DATED 30/12/1991. RESPONDENT(S)
EXHIBITS ----- NIL. / TRUE COPY / P.S. TO JUDGE PJ
Dama Seshadri Naidu, J.

----- W.P.(C)No.22298 of 2013 R
----- Dated this the 18th day of November, 2014

JUDGMENT

Heard the learned counsel for the petitioner and the learned Government Pleader
for respondents 1 and 2, apart from perusing the record. Since the issue lies in a
narrow compass, this Court proposes to dispose of the writ petition at the
admission stage itself.

2. Briefly stated, the petitioner, working as Kannada Translator in the Court of Chief Judicial Magistrate, Kasaragod, submitted Exhibit P10 application to the third respondent, to be forwarded to the first respondent for the purpose of having her date of birth corrected in the school register. It was, however, rejected by the third respondent through Exhibit P12 citing the reason that it was in violation of the conditions stipulated in Exhibit P13 Government WPC2229813 2 Order. Aggrieved thereby, the petitioner has filed the present writ petition.

3. The learned counsel for the petitioner has submitted that the petitioner has never sought correction of date of birth in the service records. She wanted to have her date of birth corrected only in the school register in terms of Rule 3 Chapter VI of Kerala Education Rules (KER). According to him, the petitioner, being an employee of the judicial department, was required to send Exhibit P10 application through proper channel, i.e., the third respondent. He has further contended that unless the petitioner seeks correction of date of birth in the service records, Exhibit P13 Government Order does not have any application. Expatiating on his submissions, the learned counsel, taking this Court through Rule 3 Chapter VI KER, has further submitted that the provisions contemplated in the said Rule does not envisage any role for the third respondent. The petitioner could have, according to the WPC2229813 3 learned counsel, submitted the application straightway to the first respondent, but only as a matter of propriety, being an employee of the judicial department, submitted it to the third respondent to be forwarded to the first respondent. As such, the rejection on the part of the third respondent cannot be sustained.

4. The learned counsel for the third respondent has strenuously opposed the claims and contentions of the petitioner. She has drawn my attention to Exhibit P13 Government Order and contended that Exhibit P10 application of the petitioner is not only barred by limitation but also not in the format required to be submitted for correction of date of birth. Once Exhibit P13 specifically mandates a particular procedure and if the application or request for the purpose of correcting the date of birth is at variance with the said mandatory procedure, it is liable to be rejected. Accordingly, the third respondent has rejected it. Thus, the learned counsel urges this Court to dismiss the WPC2229813 4 writ petition.

5. The whole controversy appears to be concerning a non-issue. The learned counsel for the petitioner has categorically submitted that through Exhibit P10 the petitioner has never intended to have any correction of her date of birth in the service records; it was intended only to have her academic records corrected, thus reflecting the correct date of birth in the school register. In this regard, it is apposite to examine Rule 3 Chapter VI KER, especially sub-rule (1A), which is as follows: "A time limit of fifteen years from the date of leaving the school or the date of appearing for the S.S.L.C. Examination for the last time whichever is earlier is fixed for entertaining requests for correction of date of birth in school records by the Commissioner of Government Examinations." 6. A perusal of the above sub-rule makes it manifestly clear that a time limit of fifteen years has been fixed for having the school records corrected. In that context, the petitioner seems to have submitted Exhibit P10 WPC2229813 5 application for correction of her date of birth. It appears that the application submitted directly by the petitioner was rejected by the second respondent on the ground of delay. In that context, the petitioner made Exhibit P11 application to the third respondent for condonation of delay.

7. So long as the correction does not affect the service records, Exhibit P13 does not have any impact nor does the third respondent have any role to play. The petitioner could have as well submitted Exhibit P10 directly to the first respondent. For whatever reason she has chosen to route it through what is said to be the proper channel, i.e. the third respondent. Once no duty has been cast on the third respondent either under the provisions of the KER or under any other extant statute to entertain an application from the petitioner even for the purpose of forwarding it to another authority, it is improper to compel the said authority under a mandamus to perform a non-duty. Thus, this Court is of the opinion that the petitioner need not take WPC2229813 6 recourse to the process of routing the application through her employer so long as she does not press for correction of the date of birth in her service records.

8. Given the express submission made by the learned counsel for the petitioner that the petitioner has no intention of having her date of birth corrected in the service records, she is at liberty to approach the first or the second respondent, as

the statutory scheme concerning date of birth mandates and seek proper redressal in that regard. Thus, disposing of the writ petition, this Court makes it clear that notwithstanding Exhibit P12 rejection by the third respondent, the petitioner is at liberty to take further steps by submitting a fresh application before the first respondent in the manner legally permissible. Dama Seshadri Naidu, Judge tkv

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com