

State of Kerala Vs. Ritha Thomas

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Court : Kerala

Decided On : Mar-31-2010

Reported in : 2010(2)KLJ637

Judge : P.R. Raman and; P.N. Ravindran, JJ.

Acts : Kerala Education Rules, 1959 - Rule 3, 3(1) and 3(4)

Appeal No. : W.A. No. 518 of 2010

Appellant : State of Kerala

Respondent : Ritha Thomas

Advocate for Def. : K. Jaju Babu,; M.U. Vijayalakshmi,; Brijesh Mohan an

Advocate for Pet/Ap. : R. Bindu, Government Pleader

Judgement :

P.R. Raman, J.

1. State is the appellant. The respondent herein filed the Writ Petition seeking a direction to the District Educational Officer, the third respondent in the Writ Petition to forward the applications Exts.P2 and P4 for alteration of the name in the school records to the second respondent Commissioner of Government Examinations, for appropriate sanction. The writ petitioner was a student studying for B. Com.

Degree in a private college. In the school records her name was shown as 'Ritha Thomas'; but in the certificate of Baptism, Birth Register and Passport, her name is recorded as 'Annie Ritha Karukaparambil'. Petitioner is yet to secure any job and to avoid future confusion as a result of the difference in the name in the school records and in the other records, namely, passport, birth register etc., she filed an application seeking correction in the name. The second respondent District Educational Officer turned down the said request as per Ext.P3, stating that the writ petitioner having completed her school education, correction can be made only by way of Gazette notification. It is seen that the Commissioner also made a similar endorsement on Ext.P4 representation made by her. But the Commissioner, unlike the District Educational Officer, did not say that the change in the name can be effected only by Gazette publication; but according to him, such changes can be made by Gazette publication also, except in the case of clerical errors. The learned Single Judge, after referring to Rule 3(4) of Chapter VI of the Kerala Education Rules, held that as per the aforesaid rule, correction can be made by appropriate authority. Since according to the petitioner, the competent authority is the Commissioner of Government Examinations and without getting sanction from him, she will not be able to notify the same in the gazette, a direction was issued to the District Educational Officer to forward the application to the Commissioner for making correction. We find no argument was advanced on behalf of the Government that either it is the District Educational Officer who is the competent authority to make correction or any other authority based on any subsequent Government Order. However, in the appeal, Annexure A an executive order issued by the Government as per G.O. Ms. No. 195/85/GAD dated 24.5.1985 was produced and it is contended that as per Paras 2 and 4 of the aforesaid order, the competent authority to effect such changes is the Tahsildar or such higher authorities in the Revenue Department. It was also contended that correction, if any, to be made by the District Educational Officer is only so long as the pupil continues in the school and not thereafter. According to the learned Government Pleader Smt. Bindu, once the student is not in the rolls of the school the matter will be governed by Annexure A order.

2. In order to appreciate the contention on either side, it is necessary to extract the relevant rules. Rule 3 of the Kerala Education Rules, reads as follows:

Alteration of Date of Birth etc:

(1) The name of a pupil, his religion and his date of birth once entered in the Admission Register shall not be altered except with the sanction of the authority specified by Government in this behalf by notification in the Gazette. Applications for such alterations and corrections should be submitted by the parent or guardian, if the pupil is still on the rolls of any school and by the pupil himself if he is not on the rolls of any school. All such applications shall be forwarded through the Headmaster with satisfactory evidence. (Court fee stamps to the value of One Rupee shall be affixed on such application).

(1A) 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.

(Note:- The Government shall consider requests for condonation of delay in making application for correction of date of birth in school records, in deserving cases, on merits, provided that the applicant is within 50 years of age as per the original entry in the school records.)

(2) If the authority referred to in Sub-rule (1) is satisfied after necessary enquiries that the change applied for could be granted, he will issue an order to make the alteration. The alteration shall then be made in the Admission Register and the other connected records of the schools previously attended by the pupil as well as in the school in which he was studying at the time.

(3) An appeal shall lie to Government against the orders of the authority referred to in Sub-rule (1) within one month of the receipt of the order appealed against:

Provided that the appellate authority may entertain the appeal after the expiry of the said period, if he is satisfied that the appellant had sufficient cause for not submitting the appeal in time.

(4) If any change of name is sanctioned after the issue of a Public Examination Certificate, the candidate concerned shall notify the change in name in the Gazette

and the notification shall be attached to his certificate.

3. On a reading of the above rules, it can be seen that the name, religion and date of birth once entered in the admission register shall not be altered except with the sanction of the authority specified by the Government in this behalf by notification in the Gazette. Rule 3 has a statutory force and hence any notification to be issued by the Government should be in exercise of the powers under R.3 as aforesaid. Government accordingly, in exercise of the said power, has issued notifications published in the Kerala Gazette dated 9th June, 1959 by Notification No. Ed.(CSpl)21564/59/EHD dated 8.6.1959 and GO.(P) 2/75/G Edn. dated 1.1.1975 published in the Gazette dated 28.1.1975, specifying the District Educational Officer to be the authority for sanctioning alteration of the name and religion of the pupil and the Commissioner of Government Examinations to be the authority for sanctioning alteration in the date of birth of the pupil. Thus, two authorities are specified as per the above notifications. In the case of change in the name, the specified authority is the District Educational Officer and in the case of change in the date of birth, the specified authority is the Commissioner of Government Examinations. In the present case, change required to be made and applied for is only in the name of the candidate and not in the date of birth. Thus, by virtue of Rule 3 of Chapter VI as read above read with the notification, there cannot be any doubt that the competent authority to effect changes in the name of the pupil is the District Educational Officer.

4. The contention of the learned Government Pleader that any change in the name of the pupil can be effected by the District Educational Officer only so long as the pupil continues in the rolls of any school and not otherwise, does not appeal to us. As per the first limb of Sub-rule (1) of Rule 3, the change to be effected in the name as also the religion and the date of birth in the admission register cannot be altered except with the sanction of the authority specified by the Government in that behalf. The next sentence in the rule only provides as to who should submit the application for effecting such changes. If the pupil is still continuing on the rolls of any school, then by the parent and if he is not on the rolls of any school, then by the pupil himself. Therefore, it is only the manner of submitting the application that is contemplated by the second sentence as read above in the aforesaid rule. As

regards the authorities specified is concerned, the Government has specified two authorities - one for effecting changes in the name and the other for effecting changes in the date of birth. There is no doubt in our mind that for effecting change in the name of a pupil, the specified authority is the District Educational Officer and none else. Sub-rule (4) of Rule 3 only mandates that in case such changes are effected after the issue of a Public Examination Certificate, the candidate concerned shall notify the change in name in the Gazette and such notification shall be attached to his certificate. In other words, it is after effecting the change in the name the same has to be published in the Gazette for completion.

5. The object of Sub-rule (4) seems to be that so long as the pupil did not appear for public examination except to make any changes in the admission register, there may not require any changes to be effected in any other certificates, whereas once the student appears in the public examination since SSLC certificate is issued thereafter, the change that is effected in the admission register has also to be carried out in the SSLC book and it being a public document accepted for all official purposes it should also be published in the Gazette for information of the public.

6. Annexure A order produced is issued by the General Administration (Service-D) Department and Para 2 thereof clearly shows that if only the changes are to be effected for the purpose of recruitment to State and Subordinate Services that the authority specified therein could sanction the changes to be effected. In the present case, the writ petitioner has not applied for recruitment to any State or subordinate services and she is still a student studying for B.Com. Further, so long as there is a statutory rule and a notification issued in terms thereof, Annexure A order cannot have the effect of amending the notification issued in exercise of the statutory power.

7. However, since the learned Single Judge has directed the District Educational Officer to forward the application to the Commissioner of Government Examinations and in the present case since the change is to be effected only in the name, we direct the District Educational Officer himself to consider the same

and pass appropriate orders. The same shall be done within a period of one month from the date of production of a copy of this judgment.

The Writ Appeal is disposed of as above.

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