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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RSA NO.221/2007 & CM NO. 11529/2007

MCD & ANR.

..... Appellants

Through: Ms.Amita Gupta and Mr. Sushil
Jaswal, Advocates.

versus

JORA

..... Respondent

Through: Mr.K.L.Gupta, Advocate.

CORAM:

HON'BLE MS. JUSTICE ARUNA SURESH

ORDER

19.11.2009

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Respondent, Jora joined the services of the appellant Corporation as daily wage beldar on Muster Roll w.e.f. 20th December, 1972. He was given regular appointment on the post of beldar w.e.f. 1st April 1979. The respondent disclosed his date of birth as 2nd May, 1949 in the affidavit, which was required to be filed by him with the appellant Corporation for his regularization. The appellant chose to send the respondent for determination of his age as on 24th May, 1986 before the Medical Board. The Medical Board, in its report, ascertained the age of the respondent as 39 years as on 19th September, 1986. Despite this, respondent was handed over a letter dated 20th December, 1999, informing him that he was due to

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retire on 30th September, 2000 on attaining the age of superannuation. Representation filed by the respondent against the said letter was considered and he was again referred to the Medical Board of Hindu Rao Hospital for his medical examination on 7th July, 2000 for determination of his age. Medical Board, Hindu Rao Hospital has assessed his age as 57 years in July, 2000 and sent its report to the appellant Corporation accordingly. However, MCD i.e. appellant served another letter dated 28th April, 2000, informing respondent Jora that he was to retire on 31st August, 2000 on attaining the age of superannuation. This resulted into another representation made by the respondent to accept the report of the Medical Board, Hindu Rao Hospital and implement it as age proof of 57 years as in July, 2000, according to which, respondent would retire from service w.e.f. 31st July, 2003.

The Trial Court partly decreed the claim of the respondent and passed the following order:-

"ISSUE NO.IV:- In view of the above discussions, the suit of the plaintiff is partly decreed along with costs and the letter No.EE/HMP/476 dated 20.12.1999 (served upon the plaintiff on 13.01.2000) whereby showing the plaintiff to retire w.e.f. 30.09.2000 and office order/letter No.EE/2000/12 dated 29.04.2000 whereby showing the plaintiff to retire on 31.08.2000 from

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the Municipal Services are declared null and void. The defendants are further directed to observed and implement the age proof i.e. 57 years in July, 2000 as assessed/declared by the Medical Board of Hindu Rao Hospital, MCD on the basis of which the plaintiff shall retire w.e.f.31.07.2003 from Municipal Services. Lawyers fees is assessed at Rs.5000/- for cost of this suit. Decree sheet be prepared. File be consigned to Record Room."

Decree was accordingly prepared.

Aggrieved by the judgment and decree of the Trial Court, appellant Corporation had filed an appeal bearing RCA No.27/2006. While concurring with the findings, judgment and decree of the Trial Court, the appeal was dismissed by the Appellate court vide its judgment dated 17th April, 2007. This has resulted into filing of present appeal before this Court.

Learned counsel for the appellant has submitted that representation of the respondent for correction of his date of birth after five years of his entering into service was against FRSR 56(m) and was accordingly not entertained by the Corporation. Therefore, substantial question of law is required to be formulated for determination.

Note 6 appended to FR 56(m), so far as is relevant for the purpose of the present case, reads as follows:-

"F.R.56 (m) NOTE 6.-----The date of birth so declared by the Government servant and accepted by the appropriate Authority shall not be subject to any alteration except as specified in this note.-----.

- (a) a request in this regard is made within five years of his entry into Government service;
- (b) -----;
- (c) -----."

Present case does not fall within the ambit of NOTE 6 to F.R. 56 (m) for the simple reason that respondent did not make any representation to the Corporation to correct or change his date of birth after filing his affidavit for regularization of his services. Rather, when he was medically examined on 1st September, 1980, for fitness certificate for absorption in service, the Medical Officer declared age of the respondent as 40 years. Since it was the Corporation who felt that respondent had not declared his correct age, they called upon the respondent to produce documents and file an affidavit to disclose his date of birth. In the affidavit filed, respondent disclosed his date of birth as 2nd May, 1949. He was again referred to the Medical Board, Hindu Rao Hospital on 24th February, 1981 for medical examination to ascertain his age. According to the report dated 27th February, 1981 of the Medical Board, Hindu Rao Hospital, his age was ascertained as 40 years.

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However, respondent was also examined by ESI Hospital and according to its report dated 19th September, 1986, his age was declared as 39 years as on 19th September, 1986. According to this report, the date of retirement of the respondent would be 30th September, 2006 and not 30th September, 2000, as shown in the service book.

Since Corporation found discrepancies in the age of respondent and also in view of the reply received from respondent to its correspondence, whereby he sought change in the date of birth or his age, disclosed by him in his affidavit, appellant Corporation decided to send respondent Jora for another medical examination to the Medical Board, Hindu Rao Hospital for determination of his age. Medical Board, Hindu Rao Hospital, on examination of the respondent in July, 2000, assessed his age as 57 years, according to which, respondent would attain the age of superannuation on 31st July, 2003.

Appellant, instead of accepting the report of the Medical Board, Hindu Rao Hospital or of ESI Hospital or as disclosed by the respondent in the affidavit decided to accept the age of the respondent as per his date of birth i.e. 1st September, 1940, as per

the Service Book and retired him w.e.f. 31st August, 2000.

Under these circumstances and on the basis of facts, as disclosed above, no substantial question of law, as suggested, is required to be formulated, because the respondent in this case did not invoke FRSR 56 (m). Rather, it was the Corporation, who questioned the authenticity of his age and continued its enquiry to find out the correct age of the respondent by repeated medical examination assessment. It was after consideration of the entire evidence placed on record that, the Trial Court determined the date of retirement of the respondent as 31st July, 2003 in its judgment and decree dated 26th September, 2005 and confirmed by the Appellate Court in the impugned judgment.

The fact finding of the courts below cannot be interfered with in the second appeal, unless the appellant raises a question of perversity in the fact finding of the courts below, which had prejudiced his case and resulted into miscarriage of justice. This is not the case of the appellant before this Court.

Hence, it is concluded that since no substantial question of law is raised in this appeal, which needs formulation and adjudication. I find no merits in the appeal. Since respondent stood

retired from service w.e.f. 31st July, 2003, i.e. about six years back, he is entitled to financial benefits only.

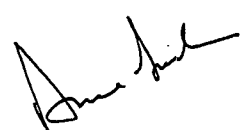
Accordingly, appellant Corporation is directed to pay the arrears of emoluments upto 31st July, 2003 and other retiral benefits, if not already paid, to the respondent within a period of three months from the date of this order.

With the aforesaid observations, appeal is dismissed.

There are no orders as to costs.

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With the dismissal of the appeal, this application has become infructuous and the same is disposed of accordingly.



ARUNA SURESH, J.

NOVEMBER 19, 2009
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