

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C.) No. 2083/2010 & CM No. 4183/2010**

% **Date of Decision: 26.03.2010**

Delhi Jal Board & Ors. PETITIONERS
Through Mr. Nishakant Pandey, Advocate

Versus

Attar Singh RESPONDENT
Through None

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

MOOL CHAND GARG, J.

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1. The writ petition has been filed by the petitioners aggrieved of the order passed by the Central Administrative Tribunal (for short "the tribunal) dated 27.11.2009 in T.A. No. 387/2009 setting aside the order dated 11.12.07 retiring the respondent from their services w.e.f. 31.10.2005 by taking his date of birth as 22.12.1945 instead of 10.08.1951 which was disclosed by the respondent on affidavit when he was initially appointed as a beldar/ daily wager.

2. The order passed by the petitioner retiring the respondent has been taken note of by the Tribunal in the impugned order. The said

order is Annexure P-1 annexed with TA No. 387/2009 and reads as under:

“The service of Shri Attar Singh S/o Shri Surat Singh, Fitter-1st class(Mech.) working with EE(SW)II who was due for retirement on superannuation on 31.10.2005 but could not be retired that day due to oversight is hereby retired from DJB services with immediate effect. However, the pensionary & terminal benefits will not be counted/allowed to him beyond 31.10.2005.”

3. The respondent aggrieved by the aforesaid order approached the Tribunal for setting aside the aforesaid order by submitting that his date of birth was 10.08.1951 and not 22.12.1945 as taken by the petitioners while retiring him allegedly w.e.f. 31.10.2005. It was submitted that in rebuttal to the date of birth disclosed by the respondent in his affidavit given at the time of his initial appointment there was no admissible evidence with the petitioners to rely upon a different date of birth as has been done by the petitioners.

4. Taking all the facts into consideration the Tribunal passed the following orders:

3. If as a matter of fact the age originally recorded in the service records of the applicant had been changed by lawful process and the applicant had been informed about this change, it should not been possible for him to claim any advantage and the impugned order would have been valid for all purposes. But on perusal of records and on presentation of facts, it could be very well gatherable that the stand of the respondents does not appear to be acceptable as the change obviously has been brought about without his knowledge or consent, and unilaterally.

8. The applicant emphatically denies that he had been consulted at any time for the change of age already on record. Circumstances generally appearing in this case also fall in line with his stand for one to conclude that one sided and unilateral decision has been taken behind the back of the applicant. Recognition of date of birth of a person on record is valid right of a civil servant and he could not be deprived of opportunity to be in service till such time he is entitled to continue. In so far as there is no basic record to show that the date of birth had been altered after a legally permissible verification the change is in valid. We are reluctant to accept the contention of the respondents that what had been there on records was valid. The fiasco precipitated leading to his termination assumes importance in this context. When it is claimed that as per applicant's service records he had to retire on 31.10.2005, actually he had been appointed as Fitter 1st Class on 31.10.2005. Thereafter DPC had regularized him on 27.06.2006. Every records pertaining to the employee are expected to be placed before the DPC when selection process is carried out. If date of birth of the employee had been altered as claimed in the year 1993 normally corresponding records would have indicated the details. Therefore, there is reason to assume that even at the time of selection as Fitter 1st Class his date of birth was not changed from 10.08.1951. The fall out would be that the records have been corrected some time later on. This was not permissible and the contention cannot be accepted that with the knowledge of the applicant, date of birth had been maintained are reliable, but when once it is found that proper records are not maintained, the assumption cannot be possible to be accepted.

9. Resultantly, we hold that the impugned orders retiring the applicant from service are illegal and not sustainable in law. We quash the impugned orders and applicant is to be deemed as in service. His break in service is to be regularized and he will be entitled to full salary for the above period, which he would have normally drawn. No other benefits also should be denied to him on the plea that he was not in service from the date of termination to the date of his reinstatement.

5. The learned counsel for the petitioner while assailing the aforesaid order submits that in view of the practice followed by the petitioners and the medical examination of the respondent at the time of his regularization which was in accordance with circulars issued by the petitioners from time to time, it was appropriate for the petitioners to have taken his date of birth as 22.12.1945 as opined by the Medical Officer. It is, thus, submitted that the order passed by the Tribunal is contrary to the records and is, thus, not sustainable.

6. The basic issue involved in this writ petition is as to whether the petitioners were justified in re-fixing the date of birth of the respondents subsequent to his appointment with the petitioners on the basis of age assessed by medical authority/Medical Officer Incharge (M.I.O.) without any ossification test or any other medical test.

7. It is an admitted fact that the respondent at the time of his appointment as beldar/ daily wager in 1971 submitted his affidavit disclosing his date of birth as 10.08.1951. Petitioners vide various circulars dated 17.08.1992, 16.11.1999 & 20.03.2002 had been asking all concerned to update the record of date of birth of the illiterate employees which was not done. However, petitioners carried out medical examination of the respondent only on 22.10.1993 through the Medical Officer Incharge who opined that the petitioner appears to be of 48 years at the time of his examination without carrying on any ossification test or any other medical test or making any other enquiry.

It is on that basis the petitioners have taken his date of birth as 22.12.1945 instead of 10.08.1951. However, the said date has been substituted in the records without giving any notice to the respondent. It is not disputed by the petitioners that no intimation regarding changing his date of birth was given to the respondent though the petitioners claim that this assessment was accepted by the respondent by putting the thumb impression which apparently is an absurd argument addressed on behalf of the petitioners. The very fact that the respondent is an illiterate person and there is no cogent evidence brought on record by the petitioners to rebut the affidavit of the respondent given at the time of his initial appointment, the submissions of the petitioners cannot be accepted.

8. Thus, in view of the facts and circumstances, the case of the petitioners that respondent was retired due to the fact that his age had been re-fixed in view of the medical assessment by M.O.I. despite no ossification test was conducted to assess the age of the respondent cannot be accepted. The medical assessment was conducted by the petitioners in 1993 was with regard to checking the medical fitness of the respondent in the said job. We are unable to understand how the petitioners can re-assess the date of birth which has been earlier given by the respondent at the time of his initial appointment on an affidavit and that too without any tests or verification.

9. For the foregoing reasons, it is apparent that the writ petition is nothing but a sheer abuse of process of law. The learned counsel for the petitioner is unable to show any cogent evidence on record on the basis of which it can be inferred conclusively that the date of birth of respondent shall not be 1951 but 1945. Merely, on the basis of alleged circulars the date of birth could not be changed in absence of any cogent medical tests or some other verification. At the time when the respondent was employed as beldar he had given an affidavit indicating his date of birth as 1951 and, therefore, unless there was some cogent ground to doubt the affidavit given by the respondent, the petitioners could not change the date of birth on the basis of alleged medication examination. Even how he was medically examined and on what basis his date of birth was ascertained is not disclosed. The contention of the learned counsel for the petitioner that the Medical Officer Incharge saw the respondent and ascertained the age of the respondent from his appearance is apparently an absurd plea.

10. In these circumstances, the order of the Tribunal does not suffer from any illegality and does not call for any interference by this Court while exercising its jurisdiction under Article 226 of the Constitution of India. Rather the writ petition filed by the petitioner is a sheer abuse and it would be appropriate to dismiss it with costs.

11. Therefore, the writ petition is dismissed with a cost of Rs. 5,000/- payable to Delhi High Court Legal Services Committee. Cost be paid within four weeks.

12. All the pending applications are also disposed of.

MOOL CHAND GARG, J.

MARCH 26, 2010

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ANIL KUMAR, J.