

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

% W.P.(C) 2162/2007

+ Date of Decision: 24th April, 2012

DIRECTOR OF EDUCATION & ANR. Petitioners

**! Through: Ms. Avnish Ahlawat & Mr. Nitesh
Kumar Singh, Advocates**

Versus

\$ RAJ RANI ...Respondent

Through: Mr. Rahul Ranjan Verma, Advocate

CORAM:

*** HON'BLE MR. JUSTICE P.K.BHASIN**

JUDGMENT

P.K.BHASIN, J: (ORAL)

The petitioners in this writ petition challenge the Award dated 28th February, 2006 passed by the labour Court in ID No. 310/1999 whereby the reference made to it by the appropriate Government in respect of the industrial dispute raised by the respondent-workman that her services had been illegally terminated by her employer, petitioner no. 1 herein, while she was posted as a waterwoman at Sarvodya Vidyalaya in Naraina Vihar, respondent no. 2, which is run by petitioner no. 1, by prematurely retiring her from service was decided against the petitioners.

2. The respondent-workman was employed at Sarvodaya Vidyalaya, Naraina Vihar, New Delhi which was under the control of Director of Education, Government of National Capital Territory of Delhi, as a part time employee in the year 1972. She was regularized on 14th July, 1988. After her regularization the respondent was got medically examined to ascertain her age as she herself had no proof of her age at that time and on the basis of the medical report her date of birth was recorded in her service record as 1st September, 1938. The respondent-workman had informed the management vide her letter dated 14th September, 1988 that her date of birth could be accepted as 1st September, 1938. Accordingly her date of birth was recorded in her service record as 1st September, 1938. However, in the year 1995, the respondent-workman wrote to the management that her date of birth had been tentatively recorded as 1st September, 1938 and so she requested the petitioners for treating her date of birth as 22nd June, 1943 as was recorded in her school leaving certificate issued by Sardarni Sada Kaur Khalsa Girls Senior Secondary School, Darya Ganj, New Delhi. She had enclosed that certificate with her written application dated 20th January, 1995 for change of her date of birth. Vide letter dated 8th May, 1995 the respondent-workman was informed by petitioner no. 1 that the Competent Authority had considered her request and had rejected it.

3. The respondent-workman was retired from service on attaining the age of superannuation on the basis of her date of birth as 1st September, 1938. Feeling aggrieved, the respondent-workman raised an industrial dispute which in due course came to be referred to the

labour Court for adjudication. Before the labour Court she filed her statement of claim in which she stated that she had been illegally retired from service by treating her date of birth as 1st September, 1938 while in fact her correct date of birth was 22nd June, 1943 as per the school certificate procured by her.

4. The management had contested the claim of the respondent-workman inter alia on the ground that she had been rightly retired from service by treating her date of birth as 1st September, 1938 which was based on her medical examination and which was accepted also by her. It was also claimed that her request for change of birth in service record was rejected as she had produced a certificate of a private school at a very late stage and, therefore, the same could not be considered as a genuine proof and so the same was rejected by the Competent Authority.

5. The learned labour Court after examining the evidence adduced by the parties came to the conclusion that the respondent-workman was illegally retired from service by treating her date of birth as 1st September, 1938. It was observed that since no enquiry had been conducted by the management from the concerned school which had issued the age certificate submitted by the workman it could not be said that that certificate was not a genuine certificate and the management, in fact, should get school leaving certificate verified and only then should have decided request of the workman. Consequently, rejecting the management's case that workman's date of birth was 1st September, 1938 on the basis of her medical examination, the labour

Court came to the conclusion that the services of the workman had been terminated illegally and unauthorizedly by way of her premature superannuation. The Award was accordingly passed in her favour directing that she was entitled to be treated in service till the age of her superannuation by treating her date of birth to be 22nd June, 1943 as mentioned in the school leaving certificate produced by her and all consequential benefits were ordered to be given to her.

6. Feeling aggrieved, the present writ petition was filed by the petitioners.

7. The learned counsel for the petitioners mainly contended that the respondent-workman's request for change of date of birth in the service record was made beyond the period of 5 years from the date of her regularization, as provided under FR 56(M) and therefore, her request for changing her date of birth in her service record could not be accepted and had been rightly rejected. However, while making this submission, learned counsel for the petitioners did not dispute the fact that respondent-workman did have a right to apply for correction of her date of birth. She also argued that such a request could be made by her only within a period of 5 years from her initial appointment as a regular employee.

8. Learned counsel for the petitioners cited one decision of the Hon'ble Supreme Court in the case of ***“Union of India Vs. Harnam Singh”, (1993) 2 SCC 162*** wherein it was held by the Hon'ble Supreme Court that in case there are rules applicable to the concerned employee in respect of correction of date of birth then any employee

desirous of having his/her date of birth in the service record corrected can make a request as per the rules and when there are no rules for making such a request then it has to be made within a reasonable period from the date of appointment. She also cited two decisions of this Court in ***“Mahipal Vs. Union of India and Others”*** WP(C) No. 15144/2000 decided on 27-07-06 and ***“Brigadier Ashok Kumar Singh Vs. Union of India & Others”, 132 (2006) DLT 64.***

9. In my view, as far as the plea raised on behalf of the petitioners that the request made by the respondent-workman for making correction in her date of birth in the service record was rejected because it had been made highly belatedly is concerned, the same cannot be accepted since that was not the reason given by the management in its letter dated 8-5-1998 whereby this respondent was informed that her request was rejected. As noticed already, it was also the plea raised in the written statement that the school certificate produced by the respondent-workman could not be considered to be a genuine proof because it had been produced at a late stage and that too from a private school. As also noticed already, the labour Court had observed in the impugned Award that the management had not got the genuineness of the school certificate verified by making any enquiries and therefore, the same could not be rejected as being not genuine. I find this there is no perversity in that reasoning of the learned labour Court justifying any interference by this Court in exercise of its writ jurisdiction. This was also not the reason communicated to the respondent in the letter dated 8th May, 1998 written to her informing her that her request for correction of date of birth in service record had

been rejected and for that reason also this plea cannot be accepted. In fact, no reason whatsoever was communicated to her for the rejection of her request for correcting her date of birth.

10. This writ petition is, therefore, dismissed.

P.K. BHASIN, J

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