

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.3387 of 2015

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ORDER:

The petitioner herein, who was employed as a Driver with the Andhra Pradesh State Road Transport Corporation (henceforth referred to as 'the Corporation') and attached to the Venkatagiri Depot, Venkatagiri, SPS Nellore District, is seeking a writ of *mandamus* for declaring the action of the respondents herein in recording his date of birth as 22-04-1957 instead of 01-02-1958, as illegal. He also, consequently, prays for a direction to the respondents to carry out the correction in his Service Record with regard to his date of birth as 01-02-1958 in place of 22-04-1957.

It appears that the petitioner has been recruited as a Driver with the respondent Corporation in the month of April, 1992. He was sent up for medical examination for assessing his physical fitness. The Physician of the Corporation, who has examined the petitioner on 22-04-1992, recorded his age as 35 years. Based on that, the Corporation has worked out the date of birth of the petitioner as 22-04-1957 and on that basis they are now proposing him to retire from service upon his attaining the age of 58 years. The case of the petitioner is that he has studied fourth class in one of the Zilla Parishad Schools in Maneguntapadu Village and hence, his date of birth, as recorded in his school record, must be taken into account and acted upon.

It is rather unfortunate that employees like Drivers and Conductors employed by the respondent Corporation are raking up the issue concerning the recording of their date of birth as and when they reach the fag-end of their service and they were just about to retire from service.

In the instant case, I have noticed that the Service Record of the petitioner is opened by the Depot Manager, Nellore-II Depot. Against Column No.5 of the said Service Record, where the date of birth of the petitioner is required to be written in words also, it was recorded as 01-07-1957 and in words it was noted as 'First July Nineteen Fifty Seven' only. The learned Standing Counsel Sri P. Durga Prasad would submit that this Service

Record is amended subsequently by the Depot Manager based upon the assessment of age made by the Medical Officer, who examined the petitioner on 22-04-1992 and assessed the age of the petitioner as 35 years. When once this Service Register is amended, according to the learned Standing Counsel, no further credence need be attached to the contention of the petitioner regarding his date of birth. Further Sri Durga Prasad would also contend that it was not even the claim of the petitioner that his correct date of birth is 01-07-1957. He, therefore, suggests that the Court could ignore consideration of the said entry, namely, 01-07-1957 from the Service Record of the petitioner.

I am not in agreement with the contentions canvassed by the learned Standing Counsel for the respondent Corporation for, a seniority list has been prepared by the Divisional Manager of the Corporation at Nellore and it appears that the same has been circulated amongst the employees in the Division. I must necessarily record that, very fairly, the learned Standing Counsel has placed the said copy of the seniority list at page 28 of the paper book filed along with the counter affidavit. In that seniority list, the name of the writ petitioner figures at Serial No.20 and in the column relating to date of birth, it was clearly recorded as 01-07-1957. It is, therefore, clear to me that the Corporation has accepted and acted upon the date of birth of the petitioner treating it as 01-07-1957. If that be the case, the petitioner could never have been declared to have attained the age of superannuation of 58 years in the month of April, 2015. Acting by 01-07-1957 as his date of birth, the petitioner is legitimately entitled to continue in service up to 30-06-2015 afternoon. I, therefore, reject the contention canvassed by the learned Standing Counsel for the respondent Corporation.

This apart, when once a date of birth is entered in the Service Record, the same cannot be unilaterally altered to the detriment of the employee concerned even without providing an opportunity of hearing to such an employee. An alteration of the date of birth in the Service Record of an employee is likely to visit him with adverse consequences if a lesser age is recorded. Such an employee will have to retire much in advance from service. In somewhat similar circumstances in the case of *STATE OF ORISSA v. DR. (MISS) BINAPANI DEI AND OTHERS*, the Supreme Court has categorically held that any such decision of altering the date of birth without adverting to the principles of natural justice would be opposing the basic concept of justice itself. I am, therefore, of the opinion that the action of the

Corporation in recording, in the Service Record of the petitioner by way of amendment, the date of birth as 22-04-1957 is bad in law. The Corporation could not have done it without putting the petitioner on notice and providing him an opportunity of hearing, which they have not done in the instant case.

The petitioner is, therefore, entitled to continue in employment based upon the date of birth entry found in his Service Record, i.e., 01-07-1957.

However, Sri P. Govinda Rajulu, learned counsel for the petitioner, would strenuously urge that the petitioner's correct date of birth is 01-02-1958 and acting by the said date, according to the petitioner, the petitioner could not have been retired any time prior to 31-01-2016.

So far as this issue is concerned, the claim of the petitioner is based upon a study certificate said to have been obtained by the petitioner as long back as on 10-11-1988. The criticism of the learned Standing Counsel that such a certificate has never been produced before the authorities of the Corporation by the petitioner cannot be brushed aside lightly. Therefore, it is open to the petitioner to persuade the Corporation to treat his date of birth as 01-02-1958 and it shall be open to the Corporation to have the study certificate produced by the petitioner verified from the school concerned and take an appropriate decision in the matter and communicate the decision taken thereon to the petitioner.

With this, the writ petition stand disposed of at the admission stage, but without costs.

Consequently, the miscellaneous petitions, if any, stand disposed of.

NOOTY RAMAMOHANA RAO, J.

Note:

CC in two days.

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20.04.2015.

