

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

WRIT PETITION No.12488 OF 2005

Between:

Smt.P.Shaheeda Bee .. Petitioner

and

A.P.S.R.T.C. rep. by its

Vice-Chairman and Managing Director,

Musheerabad, Hyderabad, and another. ... Respondents

DATE OF JUDGMENT PRONOUNCEMENT : 06th OCTOBER, 2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE SANJAY KUMAR

1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No
2. Whether copies of the judgment may be marked to Law Reporters/Journals Yes/No
3. Whether His Lordship wishes to see the fair copy of the judgment? Yes/No

THE HON'BLE SRI JUSTICE SANJAY KUMAR

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WRIT PETITION No.12488 OF 2005

ORDER

The petitioner was a sweeper in the service of the Andhra Pradesh State Road Transport Corporation (APSRTC) at its Zonal Stores, Nellore. By way of this writ petition, she assailed the proceedings dated 28.02.2002 of the Works Manager, Zonal Workshops, APSRTC, Nellore, informing her that she would attain the age of superannuation, i.e., 58 years, and would retire from service with effect from the afternoon of 28.02.2002.

No interim orders were granted by this Court in this writ petition and the petitioner admittedly retired from service on the stipulated date. Sri P.Govinda Rajulu, learned counsel for the petitioner, would however contend that his client was retired from service prematurely owing to the lapses committed by the APSRTC authorities and is therefore entitled to relief in this writ petition.

The petitioner was admittedly provided appointment as a sweeper on compassionate grounds upon the death of her husband, an employee of the APSRTC. She was appointed as a sweeper at the Bhadrachalam Depot of the APSRTC, by Office Order dated 01.04.1989. As she had no documentary evidence in proof of her date of birth, she was directed to appear before the Medical Officer, APSRTC, Tarnaka, Hyderabad, for assessment of her age. Pursuant thereto, the Medical Officer issued a certificate dated 28.02.1989 fixing her age as 40 years.

The petitioner was thereafter transferred from Bhadrachalam Depot to the Zonal Stores, Nellore, in the year 1996. Notification dated 12.09.2001 was issued by the Works Manager, Zonal Workshops, APSRTC, Nellore, informing the petitioner that as her date of birth was 28.02.1944, she would attain the age of 58 years on 27.02.2002 and would retire from service on the afternoon of 28.02.2002. Thereafter, the impugned Office Order dated 28.02.2002 was issued by the Works Manager, Zonal Workshops, Nellore, proposing to retire the petitioner from service on the afternoon of 28.02.2002 upon her attaining the age of superannuation.

This was done by reckoning the petitioner's date of birth as 28.02.1944. The petitioner alleged that there was no justification to fix her date of birth as 28.02.1944, contrary to the medical certificate issued by the APSRTC's Medical Officer at Tarnaka, which assessed her date of birth as 28.02.1949. Though the petitioner submitted representation dated 17.08.2004 to the APSRTC authorities seeking reinstatement, no steps were taken to consider her claim and she accordingly filed the present writ petition.

The APSRTC filed a counter through its Law Officer stating that the petitioner, who was the wife of a deceased driver, was initially engaged as a sweeper on contract basis from 01.04.1982 at the APSRTC's Khammam Depot. Her case was considered for

de-casualisation in the year 1989. At that time, her age was assessed by the Medical Officer and was recorded in the Medical Certificate No.57926 dated 28.02.1989. According to the APSRTC, this age was with reference to 28.02.1984 and accordingly, her date of birth was recorded as 28.02.1944. The said date of birth was stated to have been recorded in the first page of her Service Register and also in the Provident Fund Nomination Form, signed by the petitioner herself. It was on the basis of this recorded date of birth that the petitioner was stated to have been

retired from service on 28.02.2002. It was also pointed out that a notification was given well in advance to the petitioner intimating her of her date of retirement but she had raised no objection at that point of time. Further, the delay on her part in filing this writ petition was also adverted to, as the petitioner filed this writ petition only in the year 2005 though she retired from service in 2002. The APSRTC therefore sought dismissal of the writ petition.

Sri P.Durga Prasad, learned standing counsel for the APSRTC, was directed to produce the record in the light of the controversy as to the assessment of the petitioner's age/date of birth at the time of her appointment. The record was accordingly placed before this Court. Perusal thereof reflects that the petitioner was sent for medical examination on 28.02.1989 and under Certificate bearing No.57926 of the same date, the Civil Surgeon/Medical Officer of the APSRTC stated as under:

'I do hereby certify that I have examined (name) P.Shahidabee w/o. Masthan (age) 40 yrs years, a candidate for appointment as (Designation) Sweeper/Scavenger (class) X 2 in the APSRTC Department, whose Signature/thumb Impression has been appended below in my presence.

I consider Fit/~~Unfit~~ for such appointment.

Sd/-

Civil Surgeon/Medical Officer.'

Significantly, the certificate is silent as to the date with reference to which the petitioner's age was assessed. It would therefore logically imply that the age mentioned therein was with reference to the date of the examination.

Regulation 19 of the APSRTC Employees (Service) Regulations, 1965, provides that in the event an employee is unable to produce documentary proof of age/date of birth, it is for the APSRTC to send such an employee for medical examination for assessing the same. Admittedly, that was the purpose behind sending the petitioner for medical examination and procuring the aforesaid Certificate No.57926 dated 28.02.1989. Though the counter-affidavit states to the effect that this assessment was with relation to 28.02.1984, there is no explanation forthcoming as to the relevance of the said date. Even according to the APSRTC, the petitioner was initially appointed on contract basis in April, 1982 and her services were de-casualised in February, 1989. The significance of '28.02.1984' is

not brought out at all by the APSRTC, for it to claim now that the age of the petitioner was assessed under Certificate No.57926 dated 28.02.1989 with reference to that date. The certificate itself does not state to that effect but for some strange reason, the photocopy of the said certificate available in the record bears the handwritten endorsement:

‘28.2.84

40

28.2.44’

This endorsement does not bear any certification as to who had made it and under what legal authority. It is on the basis of this endorsement that the APSRTC seems to have assumed that the date of birth of the petitioner was 28.02.1944. There is, however, nothing in the record to fortify such a conclusion. No doubt, the Provident Fund Declaration and Nomination Form signed by the petitioner bears this date of birth but perusal thereof reflects that entries therein were made by a different hand and the petitioner merely affixed her signature at the relevant place. Entry of this date of birth in this document therefore cannot be held against the petitioner.

However, this Court cannot also ignore the fact that the petitioner did receive the Notification dated 12.09.2001, long before her proposed retirement from service on 28.02.2002. Strangely, she did not choose to object at that stage. Further, even after she was retired from service in February, 2002, she kept mum and filed the present writ petition only in June, 2005. This silence on her part in the face of the notification dated 12.09.2001 and her delay in approaching this Court would therefore weigh against her.

Though Sri P.Durga Prasad, learned standing counsel, would contend that these factors should altogether disentitle the petitioner from relief, this Court is not inclined to agree. The petitioner is an illiterate who was provided employment on compassionate grounds. When the APSRTC's Regulations require medical assessment to be undertaken for determining the age/date of birth of such illiterate employees who have no documentary proof of their age/date of birth, heavy responsibility rests upon the APSRTC to discharge this function with due diligence, so that no injustice is done to such illiterate employees who are entrusting their future livelihood to the APSRTC authorities concerned. The case on hand

demonstrates that the APSRTC failed to live up to this obligation while recording the petitioner's date of birth on the basis of her medical assessment. When the medical certificate merely indicated that the age of the petitioner was 40 years, it necessarily meant that the said age was with reference to the date of the examination, 28.02.1989. There is nothing available in the record and Sri P.Durga Prasad, learned standing counsel, also has no answer as to how the APSRTC picked upon 28.02.1984 as the relevant date for assessment of her age.

It is therefore clear that entry of the petitioner's date of birth as 28.02.1944, basing on this wholly irrelevant date, was without factual basis and was completely arbitrary. In effect, the APSRTC retired the petitioner from service prematurely and deprived her of her rightful employment for five more years. However, taking into account the lapse on the part of the petitioner in not being vigilant of her own rights, this Court is of the opinion that the interest of justice would be adequately served by directing the APSRTC to pay half the wages payable to the petitioner from 01.03.2002 to 28.02.2007. Apart from this, the petitioner would also be entitled to the benefit of her full service up to 28.02.2007 for the purpose of reckoning her pensionary and retirement benefits. The APSRTC shall therefore remit the amounts due to the petitioner in accordance with this order within two months from the date of receipt of a copy of this order.

The writ petition is allowed to the extent indicated above. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

06th OCTOBER, 2015

PGS