

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION NO.25071 OF 2011

DATED:19-08-2015

Between:

Bongoni Rajaiah ... Petitioner

And

The Singareni Collieries Company Limited
Kothagudem,
Khammam District
Rep. by its Managing Director
and another

... Respondents

... Respondents

COUNSEL FOR THE PETITIONER: Ms. G. Sudha

COUNSEL FOR THE RESPONDENTS: Mr. N.S. Pattabhi Rama Rao, for
Mr. Nandigam Krishna Rao

THE COURT MADE THE FOLLOWING:

ORDER:

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This writ petition is filed for a mandamus to set aside order in Ref. No.GDK.8/WO/011/2847, dt.6.7.2010, of the Superintendent of respondent No.2, whereby he has informed the petitioner that he will be attaining the age of 60 years as on 14.09.2011 and that therefore his last working day is 30.09.2011.

2. It is the pleaded case of the petitioner that he has studied upto 9th Class in Zilla Parishad High School, Veenavanka, Karimnagar District, in 1968-69, that because of family and financial problems, he could not prosecute further studies and after discontinuing his studies he has joined in Industrial Training Institute (ITI), situated at Peddapally, in Karimnagar District, and undergone training as tradesman 'Welder' in the year 1969-70 and that after obtaining certificate as Welder he has secured employment at Food Corporation of India (FCI), Godavarikhani, and worked for a period of three years and later he secured employment in Sirpur Paper Mills, Kagaznagar, and worked temporarily upto April, 1976. That the petitioner has joined as Casual Labour with respondent No.1 – company, at Ramakrishnapur, in Adilabad District, in the Month of July, 1976 that at the time of the petitioner joining, the respondents have asked for his personal particulars and taken his original Educational Qualification Certificate as well as the certificate issued by ITI Peddapally, that later his services were regularized as General Mazdoor and he was posted at Workshop, Ramkrishnapur, and that in the year 1982, vide Office Order No.PMR/3/1/82/1507, dt.16/20-1-1982, the petitioner was transferred from workshop at Ramakrishnapur to Area Workshop, Godavarikhani, under Office order dt.26.11.1982. That accordingly the petitioner reported for duty to Senior Divisional Engineer, Area Workshop GDK, on 28.11.1982 and started discharging his duties. That the petitioner further averred that as per his School Leaving Certificate handed over to the respondents he was born on 09.05.1953 and the same

was recorded by the officials in his Service Register and identity card RK-3 B-49000 was issued with the said date of birth. That he was transferred to mine GDK No.6A Incline in the month of February, 1998 and he was made permanent Welder with effect from 19.03.1988. That the Mining Authority, the Deputy General Manager, GDK No.6A Incline, issued another identity card which does not contain particulars of the petitioner's date of birth. That in spite of the fact that the petitioner's date of birth was 09.05.1953 and that he was to retire on 30.05.2013 the impugned notice was issued seeking to retire him on 30.09.2011.

3. On behalf of the respondents, the Personnel Manager of respondent No.1 has filed a counter affidavit. It is *inter alia* stated therein that the petitioner was appointed in respondent No.1 – company on 04.07.1976 as Casual Mazdoor and his age was assessed as 15.09.1951 as per the 9th Class Transfer Certificate submitted by him, by the Surgeon, Colliery Hospital, Bellampalli, and also as per the Initial Medical Examination (IME) on 05.06.1976 and that the same was recorded in the Service Register as well as 'B' Register. The respondents have expressed ignorance of the petitioner's earlier employment in FCI, and Sirpur Paper Mills, Kahaznagar. The petitioner's averment that he has submitted School Leaving Certificate as well as Welder Certificate of the ITI is denied. It is further averred that at the time of petitioner's appointment as Casual Mazdoor on 04.07.1976, as per the Guidelines/procedures of the respondent - company, the petitioner was referred to the Colliery Hospital for necessary Medical Examination to assess his fitness to work in the underground to acclimatize with the underground environment and the Surgeon had declared the petitioner 'fit' for underground work while assessing his age as 15.9.1951, as per his 9th Class Transfer Certificate. The counter affidavit referred to and relied upon Instruction No.76 of the Joint Bipartite Committee for Coal Industry with regard to the procedure for determination of age/date of birth at the time of appointment. Since the petitioner is a non-matriculate, the instruction in respect of non-matriculいたes, reads as under:

"ii) Non-matriculいたes but educated:

In the case of appointees who have pursued studies in a recognized

educational institution, the date of birth recorded in the School Leaving Certificate, shall be treated as correct date of birth and the same will not be altered under any circumstances.”

Answering respondent has further stated that at the time of selection to the Welder post, the petitioner was asked to submit his Educational Qualification as well as the Welder Certificates for verification, that accordingly the petitioner had submitted 9th Class (failed) Transfer Certificate and the Welder Tradesman Certificate and that after verification by the concerned authorities the same were returned to the petitioner.

4. I have heard Ms. G. Sudha, learned counsel for the petitioner, and Mr. N.S. Pattabhi Rama Rao, learned counsel, representing Mr. Nandigama Krishna Rao, learned Standing Counsel for the respondent - Singareni Collieries Company Limited. I have also perused the original record produced by the learned counsel for the respondents.

5. A perusal of the Service Register shows that on the first page, the date of birth of the petitioner was mentioned as 15.9.1951 in figures. Immediately below the said figures, the following words in brackets have been mentioned “Date of Birth as per T.C.”. On the second page, the petitioner’s signature was subscribed. The learned counsel for the petitioner, who has perused this register, has not disputed the petitioner’s signature. She has, however, raised a serious objection to the Service Register by stating that the same was signed by Senior Divisional Engineer, Area Workshop, Ramagundam Division, which shows that the Service Register was not prepared in 1976 when he had joined in Ramakrishnapur Workshop and that if the said Service Register is produced, the true date of birth of the petitioner will come to light. She has also argued that the respondents, having admitted that the petitioner has produced both 9th Class School Leaving Certificate and Welder Certificate issued by the ITI, the burden lies on them to show that they were returned to the petitioner and that no proof in this regard has been produced by the respondents.

6. As noted hereinbefore, in the counter affidavit the respondents have come out with the version that when the petitioner was promoted to the

post of Welder, the School Leaving Certificate and the Welder Certificate were produced by him and that after perusal of the same they were returned. Of course, as rightly pointed out by the learned counsel for the petitioner, no proof of return of the said certificates to the petitioner is produced by the respondents. Be that as it may, when the petitioner has come to this Court with the plea that his date of birth is different from the one which was entered in the Service Register, the burden heavily lies on him to prove the said plea by producing cogent evidence. The only proof produced by the petitioner before this Court is a purported I.D. Card stated to have been issued at the time of the petitioner joining respondent No.1 showing his date of birth as 09.05.1953. In my opinion, when there is a conflict between the I.D. Card and the Service Register, the entry in the Service Register is conclusive and it has higher evidentiary value. No doubt, the learned counsel for the petitioner has raised a strong objection to the Service Register by stating that the respondents have not produced the Service Register prepared in the year 1976. The learned Standing Counsel has submitted that the only Service Register that is available with the respondents pertaining to the petitioner is the one which is placed before the Court.

7. From a perusal of the Service Register, it could be seen that the first and second pages and the first entry in the third page are with one ink, and the rest of the entries are in a different ink, written by different persons. It is also clear from these writings that first and second pages and the first column of third page, appear to be far older than the rest of the entries. As noted above, on the second page the petitioner subscribed his signature and on the first page the petitioner's date of birth was mentioned as 15.9.1951. From these facts, it is reasonable to presume that the petitioner has knowledge of entry of his date of birth in his Service Register as 15.9.1951 whether such entry was made in 1976 or at a later point of time. The authenticity of these entries is further supported by the report of the Medical Examination showing that the petitioner was examined on 05.06.1976 and his date of birth was 15.9.1951. From the very appearance of these documents there can be no doubt that they are very old documents evidently prepared at the time of the petitioner

entering the service. In addition to this, the record contains employee's personal record wherein the petitioner's date of birth was mentioned as 15.9.1951 and on the second page of the same, the petitioner has signed. In my opinion, these documents clinchingly establish that the petitioner's date of birth was 15.9.1951 as entered in the records of respondent No.1 and not 09.5.1953, as claimed by the petitioner.

8. Though there is a serious dispute whether the respondents have returned the School Leaving Certificate and the Welder Certificate produced by the petitioner at time of his promotion, this controversy pales into insignificance in the face of the above discussed documentary evidence. Even assuming that the petitioner has handed over the documents to the respondents and the latter have not returned the same to him, he is expected to retain copies of the originals before he handed over the same to the respondents. No such copies have been filed by the petitioner to show that his date of birth was shown as 09.5.1953. Further, on the petitioner's own showing that he had worked for three years apiece in FCI, Gadavrikhani, and Sirpur Paper Mills, Kagaznagar, before he joined in respondent No.1 in the year 1976. Interestingly he has not produced copies of the record pertaining to his service in either of the two institutions, which would have certainly thrown light on the dispute relating to the date of birth. The said employers would not have permitted the petitioner to work without opening Service Register. No explanation is forthcoming as to why he has not produced these records which would have contained his date of birth.

9. For all the above reasons, I am of the opinion that the petitioner's claim that his date of birth is 09.05.1953 is without any merit and the same is accordingly rejected. Hence, the writ petition fails and the same is accordingly dismissed.

As a sequel to dismissal of the writ petition, W.P.M.P. Nos.30834 of 2011, 351 and 20697 of 2013, and W.V.M.P. No.4263 of 2011 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY,

J

19-08-2015

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