

*** The Hon'ble Sri Justice C.V.Nagarjuna Reddy**

+ Writ Petition No.11829 of 2009

% Dated 07.07.2015

Between:

V.Siddaiah

... Petitioner

and

1.The APSRTC,
rep. by its Managing Director
Musheerabad, Hyderabad and 2 others

...Respondents

**! Counsel for the petitioner: Mr.Basheer Ahmed
 for Mr.SAK Mynuddin**

**^ Counsel for the respondents: Mr.Aravala Rama Rao, SC for
APSRTC**

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APSRTC**

The Court made the following:

Order:

This Writ Petition is filed for a Mandamus to declare the action of the respondents, in refusing to rectify the correct date of birth of the petitioner, as illegal and arbitrary. The petitioner has also sought for setting aside proceeding No.MED2/255(9)/09-PO-II, dated 11-05-2009, of the Managing Director of respondent No.1- Corporation.

I have heard Mr.Basheer Ahmed, learned Counsel representing Mr.SAK.Mynuddin, learned Counsel for the petitioner, and Mr.Aravala Rama Rao, learned Standing Counsel for the Andhra Pradesh State Road Transport Corporation (APSRTC) representing the respondents.

The petitioner entered the service of respondent No.1- Corporation as a cleaner on 05-08-1975 and retired as Mechanic Grade I. In the service register, the petitioner's date of birth was entered as 27-07-1951. On the eve of his attaining 58 years, notice, dated 01-02-2009, was issued to the petitioner informing that he will retire from the service of the Corporation on 31-07-2009. On receipt of the same, the petitioner has made a representation, on 18-02-2009, wherein he has claimed that as per his educational certificates, his date of birth is 01-06-1952 and that therefore, he is entitled to be continued in service for one more year. This representation was replied to by the Works Manager of respondent No.1- Corporation *vide* proceeding, dated 13-03-2009, wherein it is mentioned that the petitioner's date of birth was recorded in his personal records as per the assessment of Civil Surgeon (Medical Officer), APSRTC, at the time of his appointment as cleaner on 27-07-1975, as he has not produced any school certificates or other documentary evidence relating to his date of birth till that date. It is further stated that in terms of Circular No.PD-03/2001, dated

12.01.2001, issued by the Vice Chairman and Managing Director of the Corporation, recording of the date of birth of an employee in service records at the time of entering into the service of the Corporation has to be made as per his school or college Certificates and that if the person concerned is unable to furnish satisfactory evidence of his age, it has to be assessed by a Medical Officer of the Corporation and the age so assessed or the age as declared by the person, whichever is more shall be accepted as final and the employee shall be assumed to have completed that age on the date as assessed by the Medical Officer. The Works Manager has also relied upon a purported judgment of this Court in WP.No.6488 of 1978 holding that the date of birth recorded in the service records of the employee at the time of appointment in terms of Regulation 19 of the APSRTC Employees (Service) Regulations, 1964 (for short 'the Regulations'), forms part of contract of service and that no request for alteration of date of birth of the employees should be entertained. Accordingly, the petitioner's request for alteration of date of birth was declined. A further communication was issued by the

Personnel Officer–II, Office of the Managing Director of respondent No.1- Corporation, on 11-05-2009, wherein it is stated that Clause (3) of Regulation 19 of the Regulations stipulates that the date of birth determined under Clause (2) thereof and recorded in the service register shall be binding on the employee and no alteration shall be permitted subsequently. It is further stated in the said communication that under Circular No.PD-38/1994, dated 03-06-1994, the date of birth recorded in the service records of the employee at the time of appointment in the Corporation in terms of Regulation 19 of the Regulations, forms part of contract of service and no alteration of date of birth of the employee should be entertained. It is also stated that the competent authority has agreed to adopt the date of birth of the petitioner in terms of Regulation 19(2)(b) and (3) of the Regulations. Feeling aggrieved by these communications, the petitioner filed this Writ Petition.

This Court, by interim order, dated 28-07-2009, directed that the petitioner shall be continued in service but he shall not be paid monthly salary and allowances. In its further order, dated 16-12-

2011, this Court has taken note of the fact that the petitioner has retired from service, but, he was not paid salary and other benefits during the disputed period and observed that though a direction was issued in Order, dated 28-07-2009, that the petitioner shall not be paid salary, the fact remained that the petitioner worked in the Corporation pursuant to the order of this Court. Therefore, this Court directed the respondents to settle the payment of salary to the petitioner within one month from the date of receipt of the order.

At the hearing, the learned Standing Counsel is unable to state as to whether the respondents have paid salary to the petitioner.

As regards the claim of the petitioner that as per his educational certificates, his date of birth is 01-06-1952 and not 07-07-1951, as entered in his service register, on his own showing, he has not produced his educational certificates for recording his date of birth at the time of his appointment in the Corporation as cleaner. Though the petitioner has averred that he has submitted his SSC certificate when the seniority list in the post of Mechanics Grade-II was prepared in the year 1979, no

evidence in support thereof has been filed. The respondents are very emphatic that till the petitioner was notified that he was going to retire by treating his date of birth as 07-07-1951, he has not made any representation to the Corporation for alteration of the date of birth in his service register.

As per Clause (1) of Regulation 19 of the Regulations, every person, on entering the service of the Corporation, shall declare his date of birth, which shall not differ from any declaration, express or implied, made by him, for any public purpose, before entering such service and for that purpose, the date of birth as recorded in the school or college certificate shall be adopted without any modification. However, under Clause (3) thereof, the date of birth determined under Clause (2) and recorded in the service register shall be binding on the employee and no alteration shall be permitted. Though, in this Writ Petition, the petitioner has produced copies of his 7th class and SSC certificates, purportedly, showing his date of birth as 01-06-1952, evidently, he has not submitted those Certificates at any point of time before the Corporation. Therefore, even assuming that the

petitioner's date of birth was borne out by his educational certificates, having allowed the date of birth entered in his service register based on the assessment made by the Medical Officer, he has acquiesced in setting up any other date as his date of birth. Such a claim, as discussed herein before, is prohibited by Clause (3) of Regulation No.19 of the Regulations. The petitioner, therefore, cannot be permitted to raise such a dispute, that too, at the fag end of his career after he was informed about his due date of retirement.

For the above-mentioned reasons, this Court is of the opinion that the petitioner is not entitled to the relief claimed in this Writ Petition.

Ordinarily, this Court would have dismissed the Writ Petition without any further direction. However, as per the interim order granted by this Court, the petitioner was continued in service beyond the age of his superannuation and till 31-05-2010. Even if the petitioner was not entitled to be continued in service as per the date of birth entered in the service register, the fact, however, remained that he was continued in service beyond the age of superannuation under this Court's order. The

Corporation is not expected to extract the services of the petitioner for *gratis*. At the same time, I am of the opinion that the petitioner cannot claim full salary with increment and other allowances. However, interests of justice would be met if the petitioner is paid the basic pay for the period of service rendered by him beyond his attaining the age of superannuation and upto 31.05.2010 without increments and other allowances. Further the petitioner's pension shall be fixed based on the last pay drawn as on the date of his original date of superannuation. The respondents shall pay to the petitioner the basic pay as directed above within two months from the date of receipt of this order.

Subject to the above directions, the Writ Petition is disposed of.

As a sequel to disposal of the Writ Petition, WPMP.Nos.15233 of 2009, 18729 of 2009 and 22199 of 2010, filed by the petitioner for interim reliefs, are disposed of.

(C.V.Nagarjuna Reddy, J)

Dt: 7th July, 2015

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