

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

+ **W.P.(C) No.3898/2015**

% **20th April, 2015**

SMT. KAMLESH Petitioner

Through: Mr. Ajay Dabas, Advocate.

Versus

GOVT. OF NCT & ANR. Respondents

Through: Mr. Jayendra, Advocate for
respondent No.1.
Mr. Sujit Kumar Singh, Advocate for
respondent No.2.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.6962/2015 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

+ W.P.(C) No.3898/2015 and C.M. No.6961/2015 (stay)

2. By this writ petition filed under Article 226 of the Constitution of India, the petitioner who in the year 1996 got compassionate appointment with Delhi Electric Supply Undertaking (DESU), now represented by the
WP(C) 3898/2015

respondent no.2/Tata Power Delhi Distribution Ltd, which is the successor entity, impugns the action of the respondent no.2 in taking her year of birth as 1955 and not 1959 as the petitioner claims, and thus retiring the petitioner on 31.3.2015.

3. I note that there were earlier legal proceedings between the parties as a result whereof pursuant to orders of this Court, a medical board was constituted, and this medical board gave its report in the year 2011 showing that as in the year 2011 petitioner would be of 50 years plus or minus five years i.e there was no certainty as to the exact year of birth of the petitioner and petitioner should be either 50 years or 55 years or 45 years at the time when the medical report was prepared. Therefore, this medical report was not conclusive with respect to the date of birth of the petitioner being 1959 as claimed by the petitioner.

4. In fact, during the hearing of the case counsel for the petitioner has drawn the attention of this Court to the ration card of the petitioner's family filed at pages 74 and 75 of the paper book and which itself shows that in the year 1988 petitioner's age was 33 years. Therefore, if in the year 1988 petitioner was 33 years of age, the year of birth of the petitioner would be 1955, as per the ration card document of the petitioner herself.

5. Petitioner has already retired on 31.3.2015 and since there is no

clinging evidence in favour of the petitioner and in fact there are disputed questions of facts, hence this Court under Article 226 of the Constitution of India cannot grant the relief by holding that the petitioner's year of birth is 1959 and not 1955 and which later year was stated by the petitioner herself at the time of getting compassionate appointment and as also confirmed in the public record being the ration card as stated above.

6. Counsel for the petitioner points out a document at page 71 being the pension papers issued by the erstwhile Delhi Electricity Supply Undertaking (DESU) and with whom petitioner had got compassionate appointment in the year 1996 showing the year of birth of petitioner as 1959.

7. I find that there are disputed questions of facts which require trial in this case and therefore the writ petition is not an appropriate remedy. Accordingly, while dismissing this writ petition liberty is given to the petitioner to file a suit for claiming the reliefs which are claimed in this writ petition. Writ petition is accordingly dismissed subject to the aforesaid observations.

APRIL 20, 2015
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VALMIKI J. MEHTA, J