

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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WRIT PETITION No.30409 of 2013

and

CONTEMPT CASE No.1224 of 2015

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COMMON ORDER:

The petitioner was initially appointed as a Junior Assistant in respondent No.4 school on temporary basis on 14.07.1983. By that time, he possessed the qualification of B.A. and he was allowed advance increment. At the time of entry into service, he declared his date of birth as 06.02.1959 and it was recorded in the Service Register. But, after entering the service, he filed O.S. No.962 of 1985 in the Court of District Munsiff at Suryapet, Nalgonda District for declaring his date of birth as 06.02.1959 and not 04.07.1955 as recorded in the S.S.C. Certificate. The said suit was decreed on 17.09.1986. In the said suit, the Government of Andhra Pradesh, represented by the District Collector, Nalgonda is a party apart from the Director of School Education, Secretary to Board of Secondary Education, District Educational Officer, Head Master of the school where the petitioner studied, and also the Principal of Government Junior College, Suryapet. Since the claimed date of birth viz., 06.02.1959 was already entered in the Service Register, the petitioner did not take any steps for correction of the date of birth entered in the S.S.C. certificate. The school was admitted to grant-in-aid with effect from 01.11.1989 and one post of S.G.B.T. was sanctioned. The petitioner was appointed to the said post as he was qualified by that time and was working in the unaided post with effect from 01.11.1989. The date of birth of petitioner was recorded as 06.02.1959 in the proceedings issued by respondent No.4 school on 01.10.1990. In all the subsequent records, the same date was mentioned.

However, it appears that when a complaint was received from one Ganta Nagaiah of Dirisnapally Village of Nalgonda District with regard to the petitioner's date of birth, a notice was issued to him on 26.09.2013 by respondent No.2 to submit his original S.S.C. certificate. The petitioner submitted a representation to respondent No.4 on 28.09.2013 stating that the original S.C.C. certificate was filed before the Court of District Munsiff at Surpayet, Nalgonda in O.S. No.962 of 1985 and it was not returned by the said Court. When an application for certified copy of the certificate was filed before the Junior Civil Judge, Suryapet, an endorsement was made stating that the records were destroyed. However, the petitioner submitted a Xerox copy of S.S.C. certificate by enclosing copy of the decree in O.S.No.962 of 1985. However, respondent No.2 without considering the same issued orders on 07.10.2013 ordering his retirement on superannuation on attaining the age of 58 years based on the S.S.C certificate. Challenging the said proceedings, the present writ petition was filed.

A counter affidavit is filed by the respondents stating that in the S.S.C. certificate issued in the year 1977, the date of birth of petitioner was recorded as 04.07.1955 and the petitioner has not taken any steps for correction of the date of birth in the said S.S.C. certificate even after obtaining a decree in O.S.No.962 of 1985. G.O.Ms.No.165, Finance & Planning (FIN. WING-FR.I) Department, dated 21.04.1984 and G.O.Ms.No.1263, Education Department, dated 06.05.1961 clearly stipulate that the date of birth in the Service Register shall be recorded only with the evidence and since the S.S.C. record is basic evidence, the Service Register should contain the date of birth as 04.07.1955,

but it was recorded as 06.02.1959. The action of respondents is justified by stating that as per the Rules the petitioner was asked to retire from the service on the basis of date of birth entered in the S.S.C. certificate. This Court by order in W.P.M.P.No.37756 of 2013 dated 24.10.2013 granted interim suspension of the said order, but in view of the filing of W.V.M.P. No.2855 of 2015 on 11.08.2015, the petitioner was not continued in service beyond some period after the issuance of proceedings dated 07.10.2013.

Respondent No.4 also filed a separate counter stating that in view of the interim order passed by this Court, the petitioner was permitted to attend the school and to take classes. He submitted a representation on 28.10.2013 and the said representation was forwarded seeking permission to pay salary and no permission was granted.

During pendency of the writ petition, the petitioner filed W.P.M.P.No.48719 of 2013 seeking a direction to respondents 2 to 4 to process the salary bill of petitioner and for making arrangement for payment of salary from July 2013 onwards and continue to pay the same. This Court by order dated 18.12.2014 granted interim direction as prayed for in W.P.M.P.No.48719/2013. Since the respondent authorities failed to comply with the said order, the petitioner filed contempt case in C.C.No.1224 of 2015.

It is clear from the above facts that the date of birth of petitioner was recorded as 06.02.1959 in the Service Register maintained by respondent No.4 school. I have summoned the Service Register and it contained the said date of birth. It is not known on what basis he declared the said date of birth, but the

S.S.C. certificate contained the date of birth as 04.07.1955. The petitioner filed O.S. No.962 of 1985 in the Court of District Munsiff at Suryapet, Nalgonda District impleading the State and other parties as defendants. The suit was decreed on 17.09.1986 and it has become final. By that time, the petitioner was working as Junior Assistant in respondent No.4 school and when the school was admitted to grant-in-aid with effect from 01.11.1989, since he possessed the requisite qualification, he was absorbed in the aided vacancy of S.G.B.T. The petitioner continued as such and all the correspondence from respondent No.4 school contained the date of birth as 06.02.1959. When a complaint was received with regard to the date of birth of petitioner in the year 2013, the petitioner was asked to produce the S.S.C. certificate, which he could not produce in original, but he filed a Xerox copy. However, on the basis of Xerox copy an order was passed by respondent No.2 on 07.10.2013 asking the petitioner to retire from service with effect from 31.07.2013, but by virtue of the order passed by this Court in the present writ petition on 24.10.2013, the petitioner continued to discharge his duties for some time. Since the prepondering evidence is on the side of petitioner and the Service Register contained the date of birth claimed by the petitioner viz., 06.02.1959, this Court is inclined to set aside the order of respondent No.2 dated 07.10.2013 and directs the respondent No.2 to pass orders taking the date of birth as 06.02.1959 and continue him in service till his superannuation as per the said date of birth. The petitioner shall be reinstated pursuant to the order in the present writ petition. He shall be allowed to retire on superannuation taking the date of birth as 06.02.1959. However, with regard to payment of salary to the petitioner from the date of discontinuance, consequent to the order dated 07.10.2013 of

respondent No.2 and continuance by virtue of the interim order of this Court dated 24.10.2013, the same shall be regulated by inspecting the records of respondent No.4 school. The petitioner shall not be entitled for the salary for the period he has not worked, however, he is entitled for all other benefits.

With the above observations, W.P. No.30409 of 2013 is allowed to the extent indicated above. In view of the disposal of writ petition itself, there is no need to proceed further with the contempt case, and accordingly, Contempt Case No.1224 of 2015 is closed. No order as to costs.

Miscellaneous Petitions pending, if any, shall stand closed.

A.RAMALINGESWARA RAO, J

04.08.2016

MVA