

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.25051 of 2016

ORDER:

The petitioner was appointed as driver in the respondent Corporation in the year 1988 after undergoing the process of selection. He was posted to Palakonda Depot and presently working in Gokavaram Depot. As the petitioner is not well educated, he could not submit any certificate in support of his qualification. He was sent for medical examination and was certified to be of the age of 27 years by Medical Certificate dated 27.01.1988. On the basis of said certificate, the date of birth of petitioner was recorded as 27.01.1961, as per which the petitioner would superannuate on 30.01.2019. The said date of birth continued in the service record from the date of his appointment till 2016. However, on 14.07.2016, an order was passed intimating that the petitioner was deemed to have retired from service with effect from 14.07.2016 on attaining the age of superannuation of 58 years, by declaring his date of birth as 01.07.1958, on the basis of application filed by the petitioner stating that he was aged about 29 years as on 01.07.1987. Challenging the same, the present writ petition was filed.

A counter affidavit is filed by the respondents stating that the petitioner was appointed as driver on casual basis in the year 1988 by the Selection Committee and he was decasualised with effect from 17.05.1990. He was transferred to East Godavari Region and posted to Gokavaram Depot. While

scrutinising the personal case of petitioner while effecting promotion to Grade-1 post, the Personal Officer, Rajahmundry found that the date of birth of petitioner was wrongly recorded as 27.01.1961 as per the medical certificate, but he was aged about 29 years as on 10.07.1987, based on the application filed by the petitioner. In those circumstances, the Personal Officer issued proceedings on 13.07.2016 stating that on verification of the P.Cases of employees during selection of Grade-1 promotions, it was observed that the date of birth of petitioner was wrongly recorded as 27.01.1961 basing on the medical certificate, but on the basis of declaration of the petitioner himself, his date of birth should be taken as 01.07.1958. The counter affidavit further states that as per the Service Regulations, whenever a candidate does not furnish satisfactory evidence of his age, it should 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. Since the petitioner himself declared his age as 29 years as on 01.07.1987, his date of birth should have been treated as 01.07.1958. In those circumstances only, the petitioner was retired with effect from 14.07.2016, on the basis of endorsement made on the note passed by the Regional Manager.

Heard the learned counsel for petitioner, and Sri S.V.Ramana, Standing Counsel for the respondent Corporation.

The undisputed facts in the instant case are that the petitioner submitted an application seeking employment as casual driver, declaring his age as 29 years as on 01.07.1987. Since the petitioner did not possess any educational qualification, he was sent for medical examination and the Doctor certified him to be of the age of 27 years as on 27.01.1988. On the basis of the said medical certificate, in the service records, his date of birth was recorded as 27.01.1961. The said date of birth i.e., 27.01.1961 continued till 2016. Even though a stand is taken by the respondents in their counter affidavit that the age declared by the petitioner came to the notice of respondents while effecting promotions to Grade-1 posts, no attempt was made by the respondents to put the petitioner on notice. In fact, the petitioner was surprised when it was declared that he was deemed to have retired from service with effect from 14.07.2016.

This Court has observed that the employees as well as the Corporation have been taking advantage of the illiteracy of employees, as in some cases, the Corporation is relying on the Medical Certificate, whereas the employees are relying on the certificates furnished by them at the time of entry into service on the ground that the medical certificate is meant only for the purpose of ascertaining the fitness of candidate for employment. The stand being taken by the employees is understandable, as they always want to take the position, which is beneficial to them, but the Corporation is supposed to maintain a uniform

standard. In many cases, the Corporation relies on the medical certificate, but, in the instant case, surprisingly the Corporation contradicted the medical certificate, on the basis of which the date of birth of petitioner was recorded.

The other ground relied on by the Corporation is Regulation 19(2)(b) of the A.P.S.R.T.C. Employees (Service) Regulations, 1964. The said regulation deals with the record of date of birth, which reads as follows:

“19(2)(b). Where the person concerned is unable to furnish satisfactory evidence of his age, it should 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 of attestation by the Medical Officer.”

Even a reading of the above Regulation makes it clear that when the employee is unable to furnish satisfactory evidence of his age, it should 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.

In the instant case, the Corporation on its own, on the basis of medical certificate, recorded the date of birth of petitioner as 27.01.1961 and the same continued till 2016. In view of the continuance of date of birth of the petitioner as 27.01.1961 in the records for nearly 26 years, the Corporation is estopped from relying on an unsupported date, declared by the petitioner in his application while seeking employment as a casual labour. In fact, in a slightly different circumstance, this

Court, by order dated 06.09.2016, allowed the writ petition in W.P.No.23388/2016 on the basis of continuous maintenance of records by the Corporation consistently, by following one date of birth. In the instant case also, since the Corporation has recorded and continued the date of birth of petitioner as 27.01.1961 for nearly 26 years, the Corporation is estopped from denying the said date of birth, more so, without a notice to the petitioner.

In the circumstances, the proceedings dated 14.07.2016 issued by respondent No.3 are set aside, and respondent No.3 is directed to continue the petitioner in service by taking his date of birth as 27.01.1961, till he attains the age of superannuation, as per the rules of the Corporation.

With the above observations, this Writ Petition is allowed. No order as to costs. Miscellaneous Petitions pending, if any, shall stand closed.

A.RAMALINGESWARA RAO, J

30.09.2016
MVA