

HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.382 OF 2009

ORDER:

Respondents in I.D. No.169 of 2003 on the file of Labour Court, Guntur, are the writ petitioners.

The writ petitioners pray for writ of *certiorari* to call for the records leading upon and inclusive of order dated 04.10.2007 in I.D. No.169 of 2003 on the file of Labour Court, Guntur and quash the same, as illegal and unconstitutional.

The circumstances relevant for the disposal of the writ petition are as under:

The 1st respondent, on 01.04.1966 was appointed as retainer driver by Corporation/1st petitioner. On 29.11.1969, the 1st respondent was regularised as driver. Admittedly, the 1st respondent did not produce birth certificate in proof of his age. As per the APSRTC Employees' (Service) Regulations, 1964 (for short 'the Regulations'), the 1st respondent was subjected to medical examination in the year 1972 for age determination. As on that date, the age of 1st respondent was determined as 27 years and accordingly the date of birth for the purpose of employment was accepted as 03.10.1945. The 1st respondent in the GPF nomination form, it is alleged by the petitioners, has declared his date of birth as 10.10.1943. Further in the driving licence of 1st respondent, the date of birth of 1st respondent is shown as 19.07.1941. It is alleged that the date of birth declared by the 1st respondent is contrary to Regulation 19(1) of the Regulations and suitable corrective action is required.

The cause of action arose with the issue of Exs.W.1 and W.2,

notice of retirement and retirement order dated 30.12.2000. The 1st respondent issued legal notice dated 16.09.2003 and protested that treating his date of birth as 19.07.1941 and retiring him w. e. f. 31.12.2000 is illegal and unsustainable. The writ petitioners did not favourably consider the protest of 1st respondent. The 1st respondent raised a dispute under Section 2A(2) of the Industrial Disputes Act, 1947 before the Labour Court, Guntur. The 1st respondent prayed for continuation of service till he attains the age of superannuation as on 03.10.1945.

The labour Court upon considering the material available on record, recorded the following findings:

“A reading of the above Regulation shows that if the workman at the time of entering into service failed to produce age proof, the medical officer of APSRTC has to assess his age and the same shall be entered in his SR and the same shall be binding on the workman as well as the corporation. It may not be altered under any circumstances either by the petitioner or by the corporation under the Managing Director passes an order for effecting such alteration. Here, there is no such proceedings issued by the Managing Director ordering alteration of date of birth.

The enquiry report of Zonal Audit Team has been furnished by the corporation into court on the recommendations made by the Zonal Audit Team the Managing Director, has to pass for effecting alteration of the date of birth. But the same was not done. Hence, the act of respondent in retiring petitioner in the year 2000 is illegal and invalid.

The contention of the Law Officer is that the petitioner under Reg.19(1) cannot subsequently declare his date of birth with different age either impliedly or expressly. It is contended that in GPF form as well as in driving licence he made different declarations in regard to his date of birth. Before

entering into service petitioner, before the licensing authority made the said declaration. But after entering into service he made different declaration in respect of his age in his GPF form. But it is not material whether he were that his date of birth was assessed by the medical officer as 3.10.1945. Since, he is illiterate furnished different date in GPF nomination form. Apart from it under Reg.19(1) if he committed any violation he is liable for disciplinary action. But the respondent was not employee were to retire the petitioner from service basing on the declaration made by the petitioner before Additional Licensing authority when he obtained licence or in the GPF form submitted to the corporation. The age entered in the SR has to be taken as basis for the corporation to order retirement. Here, the respondent wrongly issued a Notice retiring him from service in 2000, though his actual date of retirement would be 31.10.2003. Since the date of birth was not altered by the corporation under any proceedings issued by the Managing Director the date of birth of the petitioner shall be construed as 3.10.1945. Hence, this issue is found in favour of the petitioner and against the respondent.

Issue No.2: In the result, petition is allowed. The order of respondent retiring the petitioner from service with effect from 31.12.2000 is set aside. Since, the petitioner already reached the age of superannuation by 31.10.2003, the respondent is directed to treat the petitioner as if he is in service till 31.10.03 and further directed to pay arrears retirement benefits treating the date of superannuation of the petitioner is 31.10.03. Award is passed accordingly.

This award shall become enforceable on expiry of 30 days from the date of publication under Sec.17 of I.D. Act, by virtue of powers conferred under Section 17 A(1) of the Act.”

Hence the writ petition.

Mr.Gopal learned counsel holding for Mr.Durga Prasad vehemently contends that the Award under challenge suffers from

patent illegalities, irregularities and contrary to Regulation 19 of the Regulations. The burden is on the 1st respondent to prove his date of birth as 03.10.1945 and admittedly in the case on hand there is no authenticated documentary evidence and therefore, the order of the labour Court is illegal, unsustainable and liable to be set aside.

Mr.Venkateshwarlu Posani, learned counsel for the 1st respondent contends that the objections raised by the writ petitioners are *prima facie* untenable and illegal and at any rate the order of retirement dated 30.12.2000 cannot and could not have been passed by the writ petitioners and having accepted on their own volition, the date of birth is determined as 03.10.1945. According to him, the chronology of dates and events would conclusively establish, notwithstanding the details given in either G.P.F. form or driving licence which are not conclusive proof of once date of birth, that the 1st respondent was subjected to medical examination and on examination, the date of birth was determined as 03.10.1945. Therefore, the retirement order without giving opportunity to 1st respondent is vitiated, illegal and no ground is made out for interference under Article 226 of the Constitution of India.

I have perused the material available on record and taken note of the submissions of learned counsel for the parties.

Regulation 19 of the Regulations reads as follows:

“19.Date of Birth:

(1) 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. For this purpose, the date of birth as recorded in a school or college certificate shall be adopted without any modification.

(2) a) When the year or year and month of birth are known but not the exact date, the 1st July or the 16th of that month, respectively, shall be treated as the date of birth.

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.

(3) The date of birth as determined by the appropriate provisions of the preceding clauses shall be recorded in the service register. The date so recorded shall be held to be binding and no alteration of such date shall be permitted subsequently. It shall however, be open to the Corporation in the case of a Class 1 employee, and to the Managing Director in the case of any other employee under his administrative control, to cause the date of birth to be altered-

(i) Where in his opinion it had been falsely stated by the employee to obtain an advantage otherwise inadmissible, provided that such alteration shall not result in the employee being retained in service longer than if the alteration had not been made; or

(ii) where in the case of illiterate staff, the Managing Director is satisfied that a clerical error has occurred."

A bare reading of Regulation 19 of the Regulations indicates that under Regulation 19(1) an employee entering the service of 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 into such service. It is further stated that the date of birth recorded in a school or college certificate is adopted

without modification. Regulation 19(2) (b) provides for instances where an employee is unable to furnish satisfactory evidence of his age, it should be assessed by a Medical Officer of the Corporation. With the assessment by Medical Officer under Regulation 19(2)(b) of the Regulations, the date of birth determined shall be accepted as final and employee shall be assumed to have completed such age on the date of attestation by the Medical Officer. In the case on hand, the procedure followed by the petitioners falls under Regulation 19(2)(b) of the Regulations and the age is determined and is entered as per Regulation 19(3) of the Regulations in the Service Register. It conveys that the age so entered shall be binding and no alteration of such date shall be permitted subsequently. It is required to be noted that the Corporation can cause the date of birth to be altered only when the date of birth is falsely stated by the employee to obtain advantage, and further that the alteration shall not result in the employee being retained in service longer than if the alterations had not been made. The other instance when the power can be exercised is where a clerical error has occurred.

Now let me examine how the date of 1st respondent was examined and entered in Service Register. At the first instance, on 01.04.1966, the 1st respondent was appointed as retainer driver and was regularised as grade-II driver with effect from 29.11.1969. Admittedly, the 1st respondent is illiterate and did not have any evidence in support of his date of birth. On 03.10.1972, the 1st respondent was subjected to medical examination for determination of his age. The medical certificate marked as Ex.MW.1 reads as follows:

“R.T.C./13/M.

DISPENSARY, VJA.

O/ No.30779
3.10.72

Date

I do hereby certify that I have examined (name) B.Channa Rao E32215 (age) 27 years, a candidate for appointment as (Designation) Driver (class) A-1 in the DM/NZVD department, whose *signature/thumb impression has been appended below in my presence.

I consider *Fit for such appointment.

Sd/-
Civil

Surgeon

(stamp)

3.10.72
27

3.10.45

(thumb impression)
*Signature of

candidate

Thumb

impression
*Strike out where inapplicable."

The writ petitioners issued notice dated 01.11.1972 on the age of 1st respondent. Therefore, the age as entered in the Service Register is not based upon the entries in the school register, but based on the procedure stipulated under the Regulation 19(2) of the Regulations. The writ petitioners for all purposes have accepted the date of 1st respondent as 03.10.1945. The writ petitioners passed retirement order (Ex.W2 dated 30.12.2000) retiring the 1st respondent from service with effect from 31.12.2000. The order of retirement is a self-serving order and I have carefully perused the reasons stated in retirement order, retiring 1st respondent with effect from 31.12.2000 and I am satisfied the findings recorded by the Labour Court are correct and tenable in the facts and circumstances of this case.

Further it is to be noted that the writ petitioners at the earliest point of time disregarded the date of birth as shown either in GPF form or driving licence for entering the age in the Service Register of 1st

respondent. They have clearly and specifically decided to enter the age of 1st respondent by following the procedure under Regulation 19 (2) of the Regulations. The reading of Ex.M2 clearly shows that the age of 1st respondent was determined and correspondingly the date of birth was entered in Service Register. Now, the petitioners without notice or following semblance of procedure unilaterally reduced the age of 1st respondent. In the considered view of this Court such reduction is arbitrary and illegal. The order of retirement is illegal, contrary to the principles of natural justice and is rightly interdicted and set aside by the Labour Court. The writ petition fails and is dismissed. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

S.V.BHATT,J

Date:29.02.2016
Stp