

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.23388 of 2016

ORDER:

The petitioner was appointed as a driver in the respondent No.1 Corporation. At the time of submitting the application for the said post, he mentioned his date of birth as 30.09.1959. However, the date of birth was shown as 30.08.1959 in the records and continued till February 2016. The same was reflected in all the service records including the pay slips issued to the petitioner till February 2016. But, in the pay bill of April 2016, when his date of birth was shown as 08.09.1958, he approached respondent No.3. Respondent No.3 instead of clarifying the position issued an order on 18.06.2016 holding that the petitioner would retire from service on the afternoon on 30.09.2016. Challenging the same, the present writ petition was filed.

A counter affidavit is filed stating that the petitioner was engaged as a casual driver with effect from 27.09.1986 and subsequently his services were regularized with effect from 26.12.1986. At the time of submitting the application, the petitioner mentioned his date of birth as 30.09.1959. However, the petitioner failed to produce any documentary proof in support of his date of birth. He himself submitted a letter to the Depot Manager, Hakimpet Depot stating that there is no school certificate evidencing his date of birth and

he has no objection for fixing his date of birth. Based on the age determined by the Medical Officer, the case of petitioner was referred to the C.M.O, Tarnaka, A.P.S.R.T.C. Hospital on 05.09.1986, who found the petitioner fit, by mentioning the age of petitioner as about 28 years. Finally it is stated that the impugned notification dated 18.06.2016 was issued based on the date of birth recorded in the service register as 08.09.1958.

This Court, at the time of admission, while granting time to the learned counsel for respondents required the submission of original record and now, the original record along with the counter is filed and this writ petition is being disposed of with the consent of both the counsel.

Since the counter affidavit is silent with regard to several aspects, this Court is constrained to make reference to the documents available in the record.

The application dated 07.06.1986 filed by the petitioner for his appointment shows that he mentioned the date of birth as 30.08.1959. The application was in handwriting of somebody else, but his signature was obtained on the application stating that there is no certificate. At the time of submitting the said application, he was possessing a heavy goods vehicle licence dated 05.05.1980. On 08.09.1986, his case was referred for verifying his fitness and the

Superintendent of the Hospital recorded his age as 28 years as on that date and found him fit. However, in the service records, the date of birth was mentioned as 08.09.1958, without availability of such date of birth in any of the records. He was appointed as a driver on casual basis with effect from 27.09.1986 and subsequently his services were regularized with effect from 26.12.1986. In the office orders issued on 18.10.1986, his date of birth was mentioned as 30.08.1959 and this date continued. In the declaration form under the Employee Family Pension Scheme, 1971 the date of birth was recorded as 30.09.1959 and it was attested by the Depot Manager, Hakimpet Depot. In the Provident Fund declaration form also, his date of birth was mentioned as 30.09.1959. In the A.P.S.R.T.C. Staff Benevolent-cum-Thrift fund option-cum-nomination form, the same date was continued. During the service, he was awarded some punishments, which resulted in termination from service and reinstatement. In the Leave Calculation Sheet prepared upto 30.09.2012, the date of birth was mentioned as 30.09.1959 and the date of retirement as 30.09.2017. However, in the Employee Leave Account from the year 2013 onwards, his date of birth was mentioned as 08.09.1958. In page No.177 of the record, another fitness certificate shows that he was aged about 56 years as on 24.03.2016. Now, in the impugned order, he is sought to be retired by taking the date of birth as 08.09.1958.

The above record clearly shows that in all the service records till 2012, his date of birth was mentioned as 30.09.1959 whereas in the Employee Leave Account from 2013 it was mentioned as 08.09.1958, but the same was not communicated. However, in the pay bills till March 2016, the date of birth was mentioned as 30.09.1959 only. The fitness certificate issued by the Doctor at the time of initial entry into service cannot be taken as conclusive evidence, as another fitness certificate at Page No.177 of the record shows that he was aged about 56 years as on 24.03.2016 and if the same is taken into consideration, his year of birth would be 1960. In these circumstances, in view of the date of birth mentioned in the application at the initial stage by the petitioner and the continuance of date of birth in the pay slips given to the petitioner till March 2016, this Court gives benefit of doubt in favour of the petitioner.

Accordingly, this Writ Petition is allowed by directing the respondents to treat the date of birth of petitioner as 30.09.1959, as mentioned by them till March 2016, and superannuation in accordance with the rules by taking the said date of birth. No order as to costs.

Miscellaneous Petitions pending, if any, shall stand closed.

A.RAMALINGESWARA RAO, J

06.09.2016
MVA