

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.465 of 2016

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Date:26.02.2016

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Between:

Ogge Kanakaiah S/o Mogilaiah,
Aged about 58 years, Occu:Lineman,
(EC No.01212773) R/o MD-44,
Block 616, Pothana Colony, Godavarikhani,
Karimnagar district.

.....Petitioner

and

M/s Singareni Collieries Company Limited,
Kothagudem, Khammam District, rep.by its
Chairman and Managing Director, Khammam,
Khammam District and three others.

.....Respondents

The Court made the following:
HONOURABLE SRI JUSTICE P.NAVEEN RAO

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ORDER:

Petitioner entered into service in the year 1988. Petitioner is served notice bearing R.No.RG2/VKP/2015/ SrPO/4744 dated 04.12.2015 informing him that as per the date of birth entered in the service record, he would attain the age of superannuation on 04.01.2016 and would be retired from service w.e.f. 31.01.2016. Aggrieved thereby, this writ petition is filed.

2. Heard learned counsel for the petitioner and the learned standing counsel for the respondents.

3. Learned counsel for petitioner submitted that as per the entry in the service record his date of birth was recorded as 23.04.1958. Thus, he is entitled to continue in service till 30.04.2018. While so, petitioner was shocked to receive the notice of retirement dated 03.01.2015. Petitioner filed his objections alleging that illegally his date of birth was altered in the service record. No reply was given and on the contrary he was served with impugned notice dated 04.12.2015. Learned counsel for petitioner submitted that no correction of date of birth in service register can be made without notice and due opportunity to employee. It appears that illegally new date of birth was written as 04.01.1956 by rounding of the original date of birth. He submitted that petitioner's date of birth entry was based on school leaving certificate. Once, there is material to support claim of date of birth, no reliance can be placed on observations of medical officer while assessing the fitness of a person for employment. In support of his contention, learned counsel for petitioner placed reliance on the decision of

Division Bench of this Court in **Superintending Engineer, T.G.P. Circle, Cuddapah and another vs. Pioneer Builders, Hyderabad**^[1].

4. Learned standing counsel Sri J.Sreenivasa Rao submitted that in view of the fact that petitioner did not submit any document of his date of birth at the time of appointment, as per the guidelines, based on the report of the Medical Officer, the date of birth of the petitioner was assessed as 32 years as on 04.01.1988 and the same was incorporated in the service register. Thus, the subsequent erroneous alteration was corrected and the date of birth of the petitioner was shown as 04.01.1956 and accordingly, petitioner was informed of his retirement from service w.e.f. 31.01.2016. He therefore submitted that the notice of retirement issued by the 4th respondent is valid.

5. Learned standing counsel contended that petitioner is making a claim for correction of date of birth at the fag end of the service and by placing reliance on the school leaving certificate obtained subsequently. Thus, based on the school leaving certificate and that too at the fag end of the service, petitioner cannot seek for alteration of his date of birth and such claim is *ex facie* illegal and liable to be rejected. Learned standing counsel contended that in several decisions rendered by this Court, concerning the same employer, the claim for correction of date of birth is rejected. The principle of law is well settled that no such correction can be sought at the fag end of the service. In support of the said contentions, learned standing counsel placed reliance on the following decisions:

- i) **Madamsetty Ravinder v. Singareni Collieries Co.Ltd., Kothagudem, Khammam District and another**^[2] ;
- ii) **Singareni Collieries Co.,Ltd., Godavari Khani,**

Karimnagar District v. A.Raja Murali^[3];

iii) **State of Madhya Pradesh and others v. Premlal Shrivastava^[4];**

iv) **Hindustan Lever Ltd., v. S.M.Jadhav and another^[5]**

v) **Order of this Court in W.P.No.9674 of 2015, dated 19.8.2015**

6. In the instant case, Xerox copies of the service record and other record produced would show that initially the date of birth of the petitioner was shown as 32 years as on 04.01.1988, which would mean his date of birth as 04.01.1956. This was struck off and date of birth was recorded as 23.04.1958. It was written that the basis for such entry is the transfer certificate issued by the Zilla Parishad Secondary School. This was struck off and “√” is marked against the original entry and again it was written as 32 years as on 04.01.1988. The factum of making such correction in the relevant service record is admitted in paragraph-11 of the counter-affidavit. However, it is not explained as to when the original correction was made based on school leaving certificate produced by the petitioner and when such second correction was effected. The contention of the petitioner that he was not put on notice before undertaking correction of date of birth and restoring the date of birth as recorded initially is not denied. After receipt of notice of retirement dated 03.01.2015, petitioner filed representation dated 25.06.2015 and the same was not replied. Thus, in the instant case, the date of birth in the service record was altered without notice or opportunity to the employee.

7. There is no dispute on the principle of law relied upon by the learned standing counsel. Ordinarily no employee can seek for alteration of date of birth without having substantial material in his

possession to contend that a wrong entry of date of birth is made, moreover, no such claim can be accepted, when it is made just before retirement. However, this is not a case where the petitioner is asking alteration of date of birth in the service record, more particularly at the fag end of the service, but he is aggrieved by the alteration of date of birth made unilaterally by the employer without due opportunity to the petitioner. It may be true that at the time of joining service, petitioner did not produce the material in support of his claim, but subsequently he obtained a certificate from the school where he claimed to have prosecuted his 6th class and produced the same before the competent authority. The same was accepted and correction was made. Therefore, it is no more open for the respondent company to fall back on the assessment made by the Medical Officer at the time of joining service. Having accepted the request of the petitioner for correction of date of birth based on the school leaving certificate and relevant entries were corrected in the service record, it could not have been corrected again, more so, unilaterally, based on the age shown in the medical certificate at the time of entry into service. In view of the same, the impugned notices are liable to be set aside and they are accordingly set aside.

8. It is made clear that notices of retirement are set aside only on the ground that petitioner was not afforded opportunity before service record was corrected. However, it is not in dispute that at the time of joining service petitioner did not produce any material in support of his age. The Medical Officer assessed the age of the petitioner as 32 years as on 04.01.1988. When his age was assessed, the petitioner did not protest. Several documents disclosed his age as 32 years as on 04.01.1988. The only basis of the petitioner's claim as to the age is the entry in the transfer certificate which is obtained subsequent to the employment. Thus, since there is no authentic material, if the employer is of the opinion that proper assessment is required

regarding the correct age of the petitioner, it is open to the respondent company to subject the petitioner to medical examination by the competent medical board to assess the age of the petitioner after putting petitioner on notice and after affording due opportunity, appropriate further action as warranted may be taken. Until such exercise is undertaken, petitioner shall be continued in service as per date of birth as 23.04.1958. The petitioner shall cooperate in making such assessment. If petitioner does not cooperate to undergo medical examination, it is open to employer to take further action.

9. The Writ petition is accordingly disposed of. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

JUSTICE P.NAVEEN RAO

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[\[1\]](#) 2009(3) ALD 162 (DB)

[\[2\]](#) 2015 (6) ALD 320

[\[3\]](#) 2014 (6) ALD 404 (DB)

[\[4\]](#) (2011) 9 SCC 664

[\[5\]](#) (2001) 4 SCC 52