

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.1502 of 2009

ORDER:

The petitioner was employed in the Singareni Collieries Company Limited (1st respondent) as Badli coal filler on 04-01-1979 and he was confirmed in the said post on 30-01-1980. He was promoted as Trammer on 07-05-1985 and in 1992 as Hauler Operator.

2. Petitioner contends that he is an illiterate, that when he joined the service of 1st respondent, he informed that his age was 23 years and this was noted down by the then Welfare Officer. He contends that his service record was prepared by 1st respondent in 1982, that his age was shown as 25 years as on 09-02-1979, but it was subsequently corrected as 30 years as on 04-01-1979 and that this figure is not what he declared before the Welfare Officer at the time of his initial appointment. He contends that his Date of Birth was recorded differently in MVTC certificate dt.04-01-1979 and in CMPF record as 16-03-1953, and though he sought rectification of these errors on 09-09-2007 and sent a reminder on 05-06-2008, no action was taken by respondents. He contends that he applied for voluntary retirement under Voluntary Retirement Scheme introduced vide GHS-2008, but the respondents rejected the said claim on the ground that he did not have minimum qualifying service of 4 years and had only 2 years of left over service. He contended that he made an application on 05-12-2008 requesting for

correction of his age in the Service Register, but the respondents are not taking any action and intend to retire him in January, 2009. Petitioner contends that he was still having 7 years of service upto 04-01-2015 and respondents cannot be allowed to retire him on 31-01-2009.

3. Petitioner also alleged that as he was issued a letter dt.05-01-2009 that he would attain the age of superannuation on 31-01-2009, he filed W.P.No.516 of 2009 in this Court; then he was to attend the Area Hospital for medical examination where the Superintendent of the Hospital examined him with a stethoscope, checked blood pressure and took an X-ray for head and body, but the Doctor refused to give report or result of the tests; that he was not examined by any Orthopedic doctor; and the Personnel Manager informed him that respondents cannot do anything except to confirm the age in record even before age assessment medical report came out and the doctors came and declared officially that he would attain the age of 60 years and would retire on 31-01-2009.

4. He contends that he asked the 4th respondent to furnish copies of the report of the age assessment X-Ray, but he refused to give it. He further contended that the doctors in the 4th respondent Committee which examined him were not competent to assess his age and in fact one of them Dr.Sumangala Raje was a Gynecologist.

5. So he filed this Writ petition seeking a Writ of Mandamus to declare the action of respondents in retiring him on 31-01-2009 as

illegal and arbitrary and to continue him in service till 01-04-2016 treating his Date of Birth as 01-04-1956.

6. Counter-affidavit is filed by respondents refuting the above contentions and referring to instruction No.76 of the Joint Bipartite Committee for Coal Industry, which laid down the procedure for determination of the age and date of birth at the time of appointment of any employee. They denied that petitioner's date of birth is 01-04-1956 and contended that his age was assessed as 30 years as on 04-01-1979 and therefore he would retire in January, 2009 on attaining age of 60 years. It was contended that CMPF record relied upon by petitioner was tampered by petitioner and that his claim that his age was recorded as 30 years as on 04-01-1979 is not correct. They also referred to a circular dt.23-12-2003 wherein it was provided that the age of an employee which is differently recorded in various records could be determined by the Area Age Determination Committee. It is denied that none of the doctors who examined the petitioner on 23-01-2009 were competent to assess petitioner's age. Though it is stated that certain tests were conducted on 23-01-2009 including X-ray examination etc., it is stated that the Radiologist reported that the bone age would be 60 years as on that date. It is therefore contended that the petitioner is not entitled to any relief.

7. On 09-03-2017, this Court directed the respondent file additional counter affidavit and produce the qualification of the

Additional Chief Medical Officer who participated in the age determination of petitioner as part of the Area Age Determination Committee on 23-01-2009 as well as the name and qualifications of the Radiologist who examined petitioner's X-Ray and determined the age of petitioner as 60 years as on 23-01-2009.

8. Thereafter additional counter-affidavit was filed taking the stand that on 23-01-2009 three doctors examined the petitioner as part of the Area Age Determination Committee and their qualifications were mentioned as MBBS, MD (S&PM) for Dr.M.N. Rama Krishna, MBBS for Dr.S.Rajeswar Rao and MBBS, DGO for Dr.Sumangala Raje. It is stated that all 3 of them have retired from service.

9. So the age determination of petitioner by the Area Age Determination Committee included Dr.Sumangala Raje, a Gynecologist and Dr.S.Rajeswar Rao, both of whom held only an MBBS degree and even Dr.M.N. Rama Krishna was not a Radiologist. How in the absence of a radiologist, petitioner's age could be determined by the aid Committee is not explained by respondents.

10. In this view of the matter, this Court is of the view that the determination of age by the Area Age Determination Committee of the 1st respondent of the age of petitioner as 60 years as on 30-01-2009 does not inspire confidence at all and the respondents therefore cannot be allowed to place any reliance on the same.

11. In the interest of justice and to ensure that an impartial determination of age of petitioner is done, the respondents are directed to refer the petitioner to the Superintendent of the Osmania General Hospital requesting the latter to constitute a Committee of Experts to determine the petitioner's age; on receipt of such requisition from the 1st respondent, the Superintendent of Osmania General Hospital shall constitute a Committee for the purpose of determining the age of petitioner consisting of a competent Radiologist and a doctor from the Orthopedic Department and other experts; thereafter the said Committee shall issue notice to petitioner to appear before it; and on receipt of said notice, the petitioner shall appear before the said Committee and undergo all tests prescribed by the said Committee. The said Committee shall then determine the age of petitioner and forward copy of the same to petitioner and also one copy to the 1st respondent; and the said determination will be binding on petitioner as well as 1st respondent. The expenditure for this shall be borne by the 1st respondent. This exercise shall be completed within a period of three (03) months from the date of receipt of copy of this order.

12. This order shall not operate as a precedent in other cases and shall be confined only to the present case having regard to the peculiar facts which obtained in this case.

13. The Writ Petition is allowed to the above extent. No costs.

14. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 28-07-2017

Note : Communicate this order to the
Superintendent Osmania General Hospital,
Hyderabad for compliance.

B/o.
Vsv

