

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION NO.23907 OF 1999

ORDER:

1. This writ petition is filed by the petitioner seeking to issue a writ of mandamus declaring the order passed by the 3rd respondent in Proceedings No.P/RKP/73/98/534, dated 14.2.1998 refusing to accept the date of birth of the petitioner as per the Transfer Certificate, as illegal and arbitrary, and consequently, to direct the respondents to grant all consequential benefits.

2. Heard Sri A.K. Jaya Prakasa Rao, learned Counsel for the petitioners and Sri J. Sreenivasa Rao, learned Counsel for the respondents.

3. The case of the petitioner is as follows:

The petitioner was appointed as a Badli Worker in the respondent-company on 17.4.1971. Subsequently, he was promoted as short-firer on 25.9.1979 and he obtained short-firer certificate under Coal Mines Regulations, 1957 and he passed the said examination on 25.9.1979 and his date of birth in the said certificate was mentioned as 5.12.1951. He was again promoted as Mining Sardar, when he passed the examination on 9.12.1990, and in that certificate also his date of birth was shown as 5.12.1951. The 4th respondent issued a date of birth certificate on 9.9.1988 after verifying B-Register and mentioned his date of birth as 5.12.1951. The 4th respondent again issued another certificate dated 15.4.1989 which also reflects his date of birth as 5.12.1951. The petitioner was examined by the Medical Officer on 3.8.1977 and his date of birth was mentioned as 5.12.1951. While so, the petitioner came to know that his date of birth was wrongly mentioned in the records. When he approached the respondents, it was informed that at the time of his appointment, the Medical officer

mentioned his age as 25 years, which would mean that the petitioner was born in the year 1946. On coming to know about the discrepancies in recording his date of birth, the petitioner immediately made a representation to the 2nd respondent on 7.12.1997 and his representation was forwarded by the 4th respondent by letter dated 24.1.1998. The 3rd respondent erroneously rejected the representation of the petitioner stating that his transfer certificate cannot be accepted. Aggrieved by the same, the present writ petition is filed by the petitioner.

4. A counter-affidavit was filed by the 3rd respondent contending that even as per the records of the respondent-company, the age of the petitioner was assessed as 25 years in the year 1971 and that the petitioner kept silent regarding his date of birth right from the year 1971 and that the date of birth of the petitioner was mentioned in the service records and also in various registers like 'B' register, and that the transfer certificate, which was obtained long after entry into service, cannot be accepted.

5. During the pendency of this writ petition, the petitioner died and his legal representatives were brought on record as petitioners Nos.2 and 3.

6. The learned Counsel for the petitioners relied on A(ii) of instruction No.76 issued by the Singareni Collieries, which reads as follows:

ii) Non Matriculates but educated:

In the case of appointees who have pursued studies in a recognized educational institution, the date of birth recorded in the school leaving certificate shall be treated as correct date of birth and the same will not be altered under any circumstances.

In view of the above said clause, the learned Counsel for the petitioners contends that the date of birth entered in transfer certificate should be

taken into account for the purpose of determination of the age of the petitioner, and that the petitioner ought to have been continued in service as per the date of birth entered in transfer certificate and therefore, the proceedings issued by the 3rd respondent dated 14.02.1998 are liable to be set aside.

7. On the other hand, the learned Counsel for the respondents relied on clause A(iv) of the instructions No.76, which reads as follows:

iv) Illiterate:

In the case of appointees not covered under the foregoing clauses, the date of birth will be determined by the Colliery Medical Officer keeping in view any documentary and other relevant evidence as produced by the appointee. Date of birth as determined shall be treated as correct date of birth and the same will not be altered under any circumstances.

While relying on the above clause, the learned Counsel for the respondents contends that the petitioner was appointed as an illiterate and the Colliery Medical Officer had certified the age of the petitioner as on 09.04.1971 as 25 years and that the 3rd respondent had rightly refused to accept the transfer certificate submitted subsequently by the petitioner.

8. I have perused the records and the instructions issued by the Singareni Collieries i.e., instruction No. 76, which is annexed to the Writ Petition, wherein a procedure for determination/verification of the age of employee has been set up.

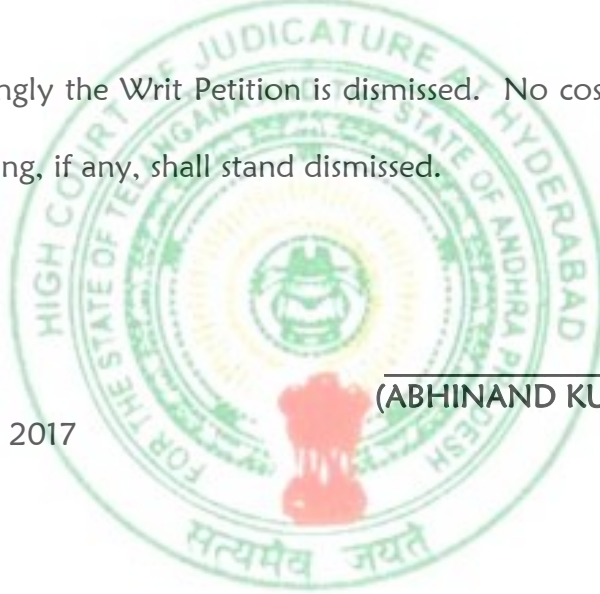
9. From the records, it is obvious that the petitioner had affixed his thumb impression in the original appointment order and service register, which was opened after his appointment into the service, and in all the

registers, the petitioner had affixed his thumb impression, which goes to show that the deceased petitioner was an illiterate. It is pertinent to note that the petitioner's date of birth was recorded as 1946 in the Coal Mines Pension Scheme, which establishes that the age of the petitioner was rightly assessed by the respondents as per the rules. Therefore, this Court is of the view that the 3rd respondent had rightly followed the procedure while determining the age of the deceased petitioner and the 3rd respondent rightly rejected the transfer certificate which was subsequently produced by the petitioner for correction of his date of birth. I do not see any illegality in rejection orders passed by the 3rd respondent.

10. Accordingly the Writ Petition is dismissed. No costs. Miscellaneous petitions pending, if any, shall stand dismissed.

15th December, 2017
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(ABHINAND KUMAR SHAVILI, J)



THE HON'BLE Mr. ABHINAND KUMAR SHAVILI



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