

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.1479 of 2007

ORDER:

In this writ petition, under Article 226 of the Constitution of India, the petitioner impugned the order of rejection, dated 12.10.2006, passed by the Officer of the respondent Corporation, whereby the representation, dated 03.12.2005, seeking reinstatement into duty and consequential relief in regard to payment of salary for the period from 30.06.2005 to 30.06.2006 was rejected.

2. I have heard the submissions of *Sri V.V.L.N. Sarma*, learned counsel appearing for the writ petitioner, and *Sri R. Vinod Reddy*, learned Standing Counsel appearing for the respondent Corporation. I have perused the material record.

3. The case of the petitioner and the submissions made on his behalf are as follows:

The petitioner joined service of the then APSEB as an Attender on 30.09.1964. He worked in different places and discharged his duties sincerely and diligently to the satisfaction of his superiors and without any remark. In the year 1999, the Board was reconstituted as AP Transco and AP Genco etcetera. The petitioner was transferred and posted to work at Hyderabad Vidyut Soudha in AP Transco. He worked under the control of the Deputy Secretary (Estt.) in IR Section. He had no schooling. At the time of entry into service, his date of birth was mentioned in his service register as 01.07.1946, based on a medical certificate produced by him. From the said certificate, he would have attained the age of superannuation on 30.06.2006. However, the Divisional Electrical Engineer concerned, by a memo, dated 16.03.1995, informed the petitioner that his date of birth in the service register is changed

as 01.07.1945 as per the revised instructions of the Board in the memo No.DM(IR)PO.3/ 104, dated 28.01.1987. Since the petitioner is an illiterate, he was under the impression that the said memo, dated 28.01.1987, was a general instruction and applied to all the employees similarly situated like the petitioner. Based on the said revised entry in the service register, proceedings were issued on 30.06.2005 retiring the petitioner from service with effect from 30.06.2005 AN. The petitioner also came to know that the then Board issued instructions through memo, dated 02.01.1990, referring to their earlier memo dated 28.01.1987. The petitioner being an illiterate with great difficulty secured the copies of both the memos. In the memo, dated 28.01.1987, instructions were issued to take the date of issuance of medical certificate into consideration and apply the provisions of Regulation 10(d) of APSEB Service Regulations read with Annexure II, part III of item no.6 of FR and ruling under 358(2) of Pension Code. It was stated that the certificate of the medical officer approved by the Board should be accepted and that 16th of month concerned should be treated as date of birth. However as per ruling under 358(2) of Pension Code, the year of birth should be arrived at by deducting the age from the year of recruitment and the date of birth should be taken as 1st of July of that year. These instructions were issued even though they will result in some discrimination and some employees losing one year of service. The hardship of the employees was realised subsequently. Therefore, revised instructions were issued through memo, dated 02.01.1990. As per the revised instructions in the said memo, all the entries made in the service register of the employees prior to 05.11.1984 were directed to be taken as final and it was stated that the dates of superannuation have to be decided on that basis. The petitioner came to know that in terms of the above instructions, the date of birth entered in the service register of the petitioner as '01.07.1946' initially at the time of his entry into service on 30.09.1964 became final and should not be altered inasmuch as it was made prior to 05.11.1984, which is the cut off

date as per the memo, dated 02.01.1990. The petitioner also came to know that though in certain cases of employees alteration of entries in the service registers were made pursuant to the instructions in the memo, dated 28.01.1987, the same were again rectified and original entries were restored. The petitioner suffered in silence having no knowledge of instructions in either of the memos. On coming to know of the instructions in both the memos, the petitioner submitted a representation to the authorities concerned for restoration of date of birth entry in the service register as '01.07.1946', but no action was taken. He submitted a detailed representation dated 03.12.2005. The petitioner was retired without following the later instructions in the memo, dated 02.01.1990, and he was not allowed to continue in duty till 30.06.2006, which is the actual date of superannuation. Though the respondent herein received the representation, no orders were passed and communicated to the petitioner. Hence, the petitioner filed W.P.No.12811 of 2006. This court directed the authorities to consider the representation, dated 03.12.2005, and pass appropriate orders thereon in the light of the memo dated, 02.01.1990, expeditiously. However, no orders were passed. Therefore, the petitioner submitted another representation, dated 04.10.2006, once again enclosing a copy of this Court's order requesting to consider his case for payment of salary for the period from 30.06.2005 to 30.06.2006 and corresponding pension with all consequential benefits. As a seeming compliance of the orders of this Court, by orders impugned in this writ petition, the representation of the petitioner was rejected. The impugned orders of rejection are illegal and arbitrary. It is alleged in the orders of rejection that the service regulations enable the department to rectify *bona fide* clerical errors and, therefore, the date of birth was corrected later, since it was wrongly noted at the inception as 01.07.1946 instead of as 01.07.1945. In-fact, there is no error in the service register in regard to the entry of date of birth of the petitioner. It is also alleged in the rejection proceedings that if

the year of the birth is known but not the date, 1st July, has to be taken as date of birth and that the employee whose age is only known but not the year of birth, the year should be arrived at by deducting from the year of recruitment, the stated age and that thereafter the date of birth should be taken as 1st July of that year. Even assuming that there is a clerical error in the entry made in the service register the same cannot be reopened as per memo no.DM (IR) PO.2.2/ 1772/ 89-1, dated 02.01.1990, as this Court in its orders directed to dispose of the representation of the petitioner in the light of the said memo. The respondent did not consider the case of the petitioner in the light of the contents of the memo. Had the respondent considered the case of the petitioner in the light of the terms of the said memo of the year 1990 he would not have been retired on 30.06.2005 since he is entitled to continue in service till he attained the age of superannuation, that is, 30.06.2006. The petitioner was retired from service illegally with effect from 30.06.2005. As there is no justification for retiring him from service on that date while continuing similarly placed employees in the service, the impugned action of the respondent is illegal, arbitrary and discriminatory. Therefore, the petitioner should be deemed to have been continued in service till 30.06.2006 and he should be paid salary & allowances, other monetary benefits and pension, by refixing the pension. Hence the writ petition is filed.

4. On the contrary, the case of the respondent and the submissions made on behalf of the respondent Corporation, are as follows:

The petitioner's date of birth was noted as 01.07.1946 in the service register based on a medical certificate produced by him is true. Subsequently, as per the guidelines issued by the erstwhile APSEB, the date of birth of the petitioner was changed by DE(Opn.), Nidadavole, of Eluru Circle, as 01.07.1945. Since the original entry was a clerical error, the same was rectified. The petitioner's contentions to the contrary are incorrect. A copy of

the memo, dated 16.03.1995, was duly served on the petitioner intimating that his date of birth is changed as 01.07.1945 as per the revised instructions in the memo, dated 28.01.1987. The memo, dated 13.09.2004, was issued notifying retiring the class IV employees from the services on attaining the age of superannuation during the calendar year 2005 and the same was also communicated to the employees concerned including the petitioner. In terms of the said notice the petitioner was retired from service and was relieved from service. And, he has received all retirement benefits. Thereafter, he started making representations stating that his date of birth should have been retained as 01.07.1946. Regulation-10(e) reads that 'the date of birth as determined and entered in the service record shall not be altered except in the case of *bona fide* clerical error, under the orders of Board.' The said regulation came into force under BP.Ms.No.199, dated 04.03.1970. The contention of the petitioner that he was under the impression that the proceedings in memo, dated 28.01.1987, was a general instruction and applied to all employees situated like him who were not having date of birth certificate and whose dates of births were noted in the service register based on medical certificates produced by them is totally incorrect. The petitioner was informed about the correction of the clerical error as early as in the year 1995; but, he never chose to contest the said correction stating that the said correction could not have been done. The said conduct amounts to acquiescence and the petitioner is debarred from agitating the matter at this stage. On attaining the age of superannuation, he was retired from service with effect from 30.06.2005. The instructions issued in memo, dated 02.01.1990, referred to by the petitioner have no relevance since a clerical error in the service register has come to the notice of the department and the same was corrected following the regulation. The contention that in view of the terms of the memo, dated 02.01.1990, the entry made in the SR earlier as '01.07.1946' cannot be reopened is not correct as the clerical error was rectified in terms of regulation 10(e) of the Service

Regulations part I read with clarifications issued for determination of age of a person. The speaking order which is impugned in the writ petition is valid. Hence, the writ petition may be dismissed.

5. I have thus noted the contentions and submissions which are made in line with the contentions of the parties. I have carefully perused both the memos dated 24.01.1987 and 02.01.1990.

6. The facts that are necessary for consideration are as follows: 'The petitioner joined services as Attender in the erstwhile APSEB on 30.09.1964. After the Board was reconstituted as AP Transco and AP Genco etcetera, the petitioner was transferred and posted to work at Hyderabad, Vidyut Soudha, in AP Transco. He has no date of birth certificate. At the time of joining service, he produced a medical certificate showing his age as 19 years. At the inception his date of birth was noted in the service register as 01.07.1946 based on the said medical certificate produced by him. Later, after noticing that the said date of birth entered as 01.07.1946 is a clerical error, the said date of birth was corrected as 01.07.1945, by making the necessary change of the entry of date of birth in the service register of the petitioner. The petitioner was served with a memo, dated 16.03.1995, stating that his date of birth in the service register is changed as 01.07.1945 as per the revised instructions of the Board in the memo No.DM(IR)PR.3/104, dated 28.01.1987. The petitioner having received the said memo had kept quiet. His version is that being an illiterate he was under the impression that the instructions in the said memo, dated 28.01.1987, are general in nature and are applicable to all the employees who are similarly situated. The department relies upon service regulations and memo, dated 28.01.1987, whereas the petitioner relies upon the memo, dated 02.01.1990. Therefore, it is necessary to note the terms and import of the said memos before proceeding further.'

6.1 The terms and contents of the memo, dated 02.01.1990, which deals with the procedure in deciding the date of birth of the employees coming under O & M Construction, contingent etc. estt: read as follows:

- i) All entries of date of birth made in the service registers of the Board employees prior to 05.11.1984 should be taken as final and dates of superannuation have to be decided on this basis.
- ii) While deciding the pending cases referred to in sub-regulation (h) of the B.P First cited if no recorded evidence of date of birth as per the school or college records is available, cases have to be dealt with by obtaining collectorial evidences or medical certificates. In deciding these cases the instructions issued in Board's memo 2nd cited for arriving at the date of birth should be followed scrupulously.

6.2 Memo, dated 28.01.1987, deals with the procedure for arriving at the date of birth based on medical certificate of an employee. From the contents of the said memo as per regulation 10(d) of the Board Service Regulations, if the date of birth of a class IV employee cannot be correctly ascertained, a certificate from a medical officer approved by the Board specifying the approximate year may be accepted for the purpose of fixing the age. Further, annexure II part III of item 6 of FR says that in case of Government servant, whose year of birth is known but not the date, 1st July, should be treated as the date of birth; and where both the year and month of birth are known but not the date, then the date 16th of the month concerned should be treated as the date of birth. Again as per the ruling under 358(2) of Pension Code when a Government servant under the control of the Government, who has no previous military service, states, on recruitment, only his age but not the year of his birth, the year should be arrived at by deducting from the year of recruitment, the stated age and then the date of birth should be taken as 1st July of that year. Further, under Regulation 36(10) of the Board Leave Regulations, where the date of birth of an employee cannot be correctly ascertained, the age as ascertained by the Medical Officer while granting certificate of physical fitness to the employee should be entered in the service book. Thus, if we go by the facts and the above principles obtaining, it is to be noted that the date of birth

of the petitioner should have been entered in the service records, at the inception, as '01.07.1945' instead of as '01.07.1946' as admittedly the petitioner produced a medical certificate showing his age as 19 years at the time of his recruitment in the year 1964 and as the date of birth of the petitioner works out to 01.07.1945 but not 01.07.1946. However, his date of birth was entered in the service register as 01.07.1946 instead of as 01.07.1945. Be that as it may.

6.3 As rightly contended by the learned Standing Counsel, a harmonious reading of both the memos of the years 1987 and 1990, the relevant leave and service regulations and the provision of the Pension Code, which are adverted to supra, would reflect that the dates of births entered prior to 05.11.1984 should be taken as final and the dates of superannuation have to be decided on the said basis and nonetheless, any clerical error in making an entry in service record can always be corrected when such error is purely clerical in nature and is made contrary to the above provisions. It is pertinent to note that contents of the memo, dated 02.01.1990, do not preclude the employee from seeking or the employer from making the correction of the date of birth of an employee entered wrongly in the service records on account of a clerical error. In the case on hand, as already noted, the correct date of birth should have been noted as '01.07.1945' as the petitioner could not produce any date of birth certificate but only produced a medical certificate showing his age as 19 years at the time of his recruitment in the year 1964. Had the correct procedure been applied and the correct date of birth had been entered in the service register at the inception, the date of birth of the petitioner would have been mentioned in the service records as 01.07.1945 and not as 01.07.1946. Therefore, in the case of the petitioner, the entry of date of birth made as 01.07.1946 is a clear case of clerical error and, therefore, the department is not precluded by any subsequent memos or otherwise from correcting the clerical error, which is apparent in the service register. Therefore, the

contention of the petitioner that in view of the memo, dated 02.01.1990, and the entry of date of birth having been made prior to 05.01.1984 in his service records could not have been altered cannot be countenanced.

7. On the above analysis, the writ petition is liable to be dismissed being devoid of merit. Be that as it may.

8. Before parting, it is also to be noted that the petitioner was admittedly served with a memo, dated 16.03.1995, and was informed that his date of birth in the service register is changed. However, having had knowledge of the said fact, he had kept quiet. Having retired from the service on 30.06.2005 he raised the issue. He first gave a representation and for the reason that no action was taken on his earlier representation, he gave another representation dated 03.12.2005. In his representation, dated 03.12.2005, he did not state as to when he has submitted his earlier representation. When his representation, dated 03.12.2005, was not acted upon, he filed WP.No.12811 of 2006 and this Court by order dated 27.06.2006 directed the respondent to consider the representation, dated 03.12.2005, in the light of the memo, dated 02.01.1990. Thus, since 1995 and till the year 2005, the petitioner did not assail the action of the respondent in correcting the date of birth in the service register on the ground that a wrong entry was made in the service register by a clerical mistake. However, he raised the issue after a decade, that too after his retirement, *inter alia*, alleging that persons similarly placed were given benefit and were continued in service as per the original entries in the service registers and that such employees were not touched in view of the terms of the memo, dated 02.01.1990. Even this relief based on the benefit extended to similarly placed persons was claimed belatedly. Therefore, on the ground of delay and laches also, the petitioner is not entitled to the relief claimed in the writ petition.

8.1 Further, in the decision in *State of Uttar Pradesh v. Arvind Kumar Srivastava and others*¹ relied upon by the learned counsel for the respondent, the question that fell for consideration was – ‘whether in the given case, approach of the Tribunal and the High Court was correct in extending the benefit of earlier judgment of the Tribunal which had attained finality as it was affirmed till the Supreme Court? The issue involved in the cited case is in regard to cancellation of appointments by a Chief Medical Officer which were made by his predecessor; and it so happened that a few candidates who were affected by such cancellation orders approached the Tribunal challenging the legality, validity and propriety of the said orders on several grounds; and the Tribunal decided the case in their favour and the State’s Writ Petition before the High Court and the Special Leave Petition before the Supreme Court were dismissed; thereafter the respondents in the cited case having waited all the while, that is, till the disposal of the Special Leave Petition in the year 1994 by the Supreme Court filed claim petition for giving appointments to them as well on the strength of the judgment of the Tribunal given in the case of other persons claiming parity; the Tribunal and High Court extended the benefit of the earlier judgment to such respondents; since the selection process took place in the year 1986 and as twenty seven years have passed after the issuance of cancellation orders and as there was unexplained delay and laches in filing the claim petition after a period of nine years, and as most of the respondents who claimed parity would be almost 50 years of age or above, the Supreme Court allowed the appeal of the State and had set aside the orders of the Tribunal and High Court.

8.2 In the case on hand, the petitioner is claiming a personal relief, that too, after a lapse of more than a decade and after his retirement. The entitlement to benefit is not based on a common cause as in the case of the petitioner the correction of wrong entry of date of birth was made as the

¹ (2015) 1 SCC 347

original entry was incorrectly made on account of a clerical error. Therefore, on account of delay and laches also, the writ petition should fail.

9. The Writ Petition is, accordingly, dismissed.

Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

JUSTICE M. SEETHARAMA MURTI

28.02.2017
Vjl

