THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.10641 OF 2010

DATED : 07.11.2017

Between :

Jangili Parvatalu S/o.Komuraiah,
Aged about 56 yrs, Occu : Pump Operator in GDK-7 LEP,
R.G.1, Godavari Khani, R/o.Vittal Nagar,
Godavari Khani, Karimnagar District.

.. Petitioner

And

The Chairman & Managing Director,
The Singareni Collieries Company Limited,
Kothagudem Collieries,
Khammam District & another.

.. Respondents

HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
सत्यमेव जयते

This court made the following :

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

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ORDER :

Petitioner joined service as worker trainee on 22.12.1976. At the time of joining service petitioner was subjected to medical examination and as per the assessment in the medical examination, his date of birth was recorded as 26 years as on 11.11.1976 correlating to 11.11.1950 as the date of birth. Based on the said date of birth entry in the service record, petitioner was issued notice on 11.02.2010 informing him that he was attaining the age of superannuation of 60 years on 30.11.2010 and that he would be retiring from service. This writ petition is filed challenging the said order.

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

3. Learned counsel for the petitioner contends that by the time petitioner was employed, he passed IX class and at the time of selections, he produced IX class pass certificate which discloses his date of birth as 08.07.1954. But erroneously, his date of birth was recorded as 11.11.1950. The said action is illegal and arbitrary. Learned counsel also submits that petitioner protested all along, the entries made in the service record. But his protest was not considered and no response was given to him.

4. On 19.08.2004, petitioner submitted a representation in writing seeking rectification and correction of his date of birth as per the school leaving certificate. Petitioner alleges that such

representation was also not acted upon and no efforts were made to undertake correction of date of birth. By placing reliance on Clause 76 (B) of the Implementation Instruction of the Joint Bipartite Committee for Coal Industry, learned counsel submits that in terms of this instruction, the date of birth is required to be corrected based on the entry made in the school leaving certificate and in terms of the said mandate the respondents ought to have undertaken the exercise of correction of date of birth entry. Learned counsel submits that implementation instructions are binding on the respondent company and in turn thereof, the company had no option but to undertake correction of date of birth, based on the school leaving certificate and not undertaking correction in terms of those instructions and retiring the petitioner on 30.11.2010, was ex-facie illegal and therefore, petitioner is entitled to continue in service until he attains the age of superannuation by treating his date of birth as 08.07.1954.

5. Learned Standing counsel submits that on several occasions petitioner was in the knowledge of entry of his date of birth made in the service record. But he never protested till the year 2004. He further submits that petitioner earned several promotions and filed certain declarations, copies of which are enclosed to the counter affidavit, which would show that petitioner has signed those documents, which disclose the date of birth entry in the service record as 11.11.1950, but petitioner never protested. The contention of the petitioner that he produced school leaving certificate at the time of recruitment is denied. On the issue of application of implementation instruction No.76 (B), learned standing counsel submits that in terms of Sub-Para (ii) no such

correction need to be undertaken, if there is no variation in the records. In the case on hand, from the beginning only one date of birth is reflected and since there was no variation found in the record, the question of undertaking review of date of birth does not arise.

6. In the case on hand, the claim of the petitioner is to undertake correction of date of birth in the service record from 11.11.1950 to 08.07.1954. In other words from the beginning the service record reflect the date of birth of the petitioner as 11.11.1950. The averments and the documents enclosed to the counter affidavit would disclose that petitioner earned promotions as coal filler w.e.f 01.07.1978, as pump operator, Cat.III w.e.f 05.06.1979 and later as Pump Operator Cat.VI(SLU) at Gdk 7 LEP. The documents enclosed to the counter would also disclose that on number of occasions petitioner had an opportunity to verify the entry of date of birth made in the service record. On 13.05.1998, petitioner signed Form PS-3 which discloses the date of birth as 11.11.1950. He has also filled the nomination form on 13.05.1998 declaring his wife as nominee and there also the date of birth is mentioned as 11.11.1950 and in Form-B Register, the date of birth is disclosed as 11.11.1950. Thus, on number of occasions petitioner was in the know of the date of birth entry made in the service record and till 2004, petitioner did not protest.

7. It is no doubt true, that the relevant entry at the time of employment would disclose his qualification as IX class. There is no material on record to show that petitioner has filed school leaving certificate and inspite of furnishing the same, the entry of date of birth in the school leaving certificate was not taken into

consideration, but was referred to medical examination. The respondent-company denied submission of school leaving certificate. If what is stated by the petitioner is true that the school leaving certificate was submitted, nothing prevented him in protesting against not considering the date of birth as reflected in the school leaving certificate. He kept quiet, even though on number of occasions he had the knowledge of the entry of date of birth in the service record. Thus, it is not the case where there is a correction made in the service record to the disadvantage of the petitioner without following the due procedure and therefore, the same is vitiated. In other words petitioner was seeking correction of date of birth in the service record at the fag end of his service.

8. The principle of law of seeking correction of date of birth more particularly at the fag end of service is well settled and the principle of law laid down by the Hon'ble Supreme Court in catena of decisions clearly mandate that no claim for correction of date of birth should be entertained, much less, at the fag end of service.

9. Learned counsel for the petitioner sought to contend that in terms of implementation instructions, it is necessary for the employer to undertake correction of date of birth based on the school leaving certificate.

10. To appreciate this contention, it is necessary to consider the relevant provisions in the implementation instruction No.76 (B) (i) & (ii) :

Review/determination of date of birth in respect of existinig employees :

(i) a) In the case of the existing employees Matriculation Certificate or Higher Secondary Certificate issued by the recognized Universities or Board or Middle Pass Certificate issued by the Board

of Education and/or Department of Public Instruction and admit cards issued by the aforesaid Bodies should be treated as correct provided they were issued by the said Universities/Boards/Institutions prior to the date of employment.

(b) Similarly, Mining Sirdarship, Winding Engine or similar other statutory certificates where the Manager had to certify the date of birth will be treated as authentic.

Provided that where both documents mentioned in (i) (a) and (i) (b) above are available, the date of birth recorded in (i) (a) will be treated as authentic.

(ii) Wherever there is no variation in records, such cases will not be reopened unless there is a very glaring and apparent wrong entry brought to the notice of the Management. The Management after being satisfied on the merits of the case will take appropriate action for correction through Age Determination Committee/Medical Board.

11. According to B (I) in the case of existing employees, matriculation certificate or higher secondary certificate issued by the recognized Universities or Board or Middle Pass Certificate issued by the Board of Education and/or Department of Public Instruction and admit cards issued by the aforesaid Bodies should be treated as correct and date of birth should be corrected based on the said certificate. Assuming that the school leaving certificate is also covered by the said provision, it is necessary to notice implementation instruction 76 (B) (ii). According to this provision, there is no obligation cast on the employer to undertake correction of date of birth, if there is no variation in the service record and glaring and apparent wrong entry was not brought to the notice of the employer.

12. As noted above, in the instant case from the date of joining service the only date of birth that is reflected in the service record is 11.11.1950. There was no variation in the records. Thus, paragraph 76 (B) (i) of implementation instruction cannot be

extended to review date of birth entry and in the process of reviewing the date of birth, to take note of the entry of date of birth made in the school leaving certificate.

13. Further, this Court by order dated 23.06.2010 made in W.P.M.P.No.13629 of 2010 directed the respondent company to verify the genuineness of transfer certificate submitted by the petitioner. Accordingly, verification was done and the respondent company found that the transfer certificate submitted by the petitioner was genuine. However, the respondents in their letter No.RG.I/PER/C/54/4688 dated 05/07.09.2010 informed the petitioner that his request for correction of date of birth cannot be acceded to even though the school leaving certificate is a genuine one and thus, the request is not within the purview of implementation instructions. It appears a copy of the said letter was also served on the petitioner. But petitioner did not take further steps against the said decision communicated to him.

14. Thus, I do not see any error in the date of birth entry made in the service record and notice issued to the petitioner informing him of his retirement based on the entry made in the service record, warranting interference at this stage and the writ petition is liable to be dismissed.

15. Accordingly, the Writ Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

P.NAVEEN RAO,J

7th November 2017
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