

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.3216 of 2009

ORDER:

Assailing the order dated 19.06.2007, passed by the Industrial Tribunal-cum-Labour Court, Warangal, modifying the decision of the respondent therein i.e., Depot Manager, APSRTC, Warangal-II, holding that the date of birth of the petitioner as recorded in service records cannot be changed, is the subject matter of challenge in the present Writ Petition.

2) The facts in issue are as under:-

For the sake of convenience, the parties hereinafter will be referred to, as arrayed in I.D.No.136 of 2005.

The petitioner was appointed as Driver on 01.11.1976 and thereafter his services were regularized. Subsequently he was promoted as ADC/Controller and was working as ADC(Oil) in the respondent/Depot. Petitioner submitted required original certificates i.e., S.S.C., memo and T.C. issued by the Board of Secondary Education and the Government Markazi High School, Hanamkonda respectively at the time of his appointment. He completed his SSC in the year 1969 and in all the relevant certificates his date of birth was recorded as 02.03.1949. He got a driving licence in the year 1970 at the age of 21 years. Respondent changed the year of birth as 02.03.1948 without any reason. On coming to know about the same,

the petitioner approached the respondent to give the Xerox copies of certificates i.e., T.C. and memo of SSC or to give originals for taking Xerox copies but they were not given. He gave a representation to the authorities not to change his year of birth and if it is already changed to correct the same. But the respondent through a letter dt:06.04.2004 informed that the date of birth of the petitioner was recorded as 02.03.1948 as per his personal records and change of date of birth cannot be entertained. He gave an application to the Regional Manager on 06.07.2004, but till date i.e., 19.12.2005, the Regional Manager has not responded to it. After exhausting all the legal means, he approached the Union and represented the matter through the Union Leaders and they have exposed his cause before the conciliation officer. As the conciliation failed, the factual report was submitted to the Government and they in turn referred the matter to the Labour Court for adjudication. The petitioner further stated that respondent altered his date of birth to 1948 with an intention to retire him from service one year before his actual retirement which causes heavy financial loss to him. Therefore, the petitioner requested the court to direct the respondent to correct the year of birth from 1948 to 1949 and continue him in service until his original date of retirement i.e., 30.03.2007. After considering the material placed before the Court, the Labour Court passed an order holding that the action of the Depot Manager, APSRTC, Warangal-II

in communicating its decision that the recorded date of birth in service records cannot be changed as requested by the petitioner is not justified and accordingly modified the same by directing the respondent to pay all the service benefits to the petitioner from 31.03.2006 to 31.03.2007 by treating him as in service. Respondent was further directed to pay the service benefits within three months from the date of the order. Challenging the same, the present Writ Petition came to be filed.

3) On 19.02.2009 this Court while admitting the Writ, ordered interim suspension of the Award.

4) The averments made in the affidavit filed in support of the Writ Petition disclose that the second respondent herein was appointed as a Driver with effect from 01.11.1976 and he was promoted as Asst. Depot Clerk. At that time, the selection committee perused all the service records and the date of birth of R-2, wherein his date of birth was mentioned as 02.03.1948 in the guide sheet. The selection committee has recorded the Educational Qualification in the guide sheet as 'HSC failed' based on the folio No.31 of the P.Case. In the seniority list also, the date of birth of second respondent was notified as 02.03.1948, for which no objection was raised. It is further stated that as per Circular No.PD-59/1982 dated 10.07.1992 and Circular No.PD-106/1993 dated 30.11.1993, all the Unit Officers

were instructed to reverify the correctness of date of birth entries entered in the Service Registers of all the employees and necessary correction may be effected in the personal records forthwith. Pursuant to which, the personal records of all the employees were verified and corrected. In that process the date of birth of second respondent was verified and corrected as 02.03.1948 in place of 02.03.1949. Further, the second respondent also availed house loan by submitting application dated 12.06.1986 wherein he himself mentioned his date of birth as 02.03.1948, and in the year 2003 he made a representation to the petitioner with a request to change his date of birth as 02.03.1949, but the same was rejected. It is urged that the Award of the Labour Court is arbitrary, illegal and based on no evidence.

5) The learned counsel for the petitioner/Corporation placed reliance on the judgment of Hon'ble Supreme Court of India in **State of Maharashtra and another v. Gorakhnath Sitaram Kamable and others**¹ in support of his plea. In the said judgment, the Hon'ble Apex Court after considering catena of judgments, observed that the date of birth of Government servants who had entered into service on or after 1981 cannot be changed after five years of joining and any change in date of birth in service record at fag end of service career

¹ (2010) 14 Supreme Court Cases 423

is not permissible. Further, no application for alteration of date of birth after five years be entertained.

6) It is not in dispute that the petitioner was appointed as driver in the respondent/Corporation in the year 1976. It is also an admitted fact that originally the date of birth was entered in the service register as 02.03.1949 and later it was altered as 02.03.1948. The School Assistant, Government Markazi High School, where the petitioner studied SSC, deposed about the issuance of date of birth certificate as per Ex.X1, wherein the date of birth of the petitioner was shown as 02.03.1949. At the time of his appointment, the petitioner also submitted nomination-cum-authorization form, wherein the date of birth of the petitioner was shown as 02.03.1949. Ex.M3-Circular No.PD-70 of 1989 clearly states that date of birth mentioned in the appointment order is binding on the employee. Admittedly, at the time of appointment the petitioner furnished his date of birth as 02.03.1949 and the same was also entered in the service register. The same was altered to 02.03.1948 by the respondents without any basis. The Petitioner herein made several requests in the year 2003 and 2004 but the same were rejected without verifying the originals. Due to the acts of the respondent, the petitioner was compelled to retire one year prior to his retirement. Though, the loss sustained by the petitioner cannot be compensated wholly in terms of money, but there is every justification in granting service benefits. Hence, I see no

illegality or irregularity in the order of the Labour Court directing the respondent to pay all the service benefits from 31.03.2006 to 31.03.2007 to the petitioner within three months from the date of order.

7) Accordingly, the writ petition is dismissed. There shall be no order as to costs.

C. PRAVEEN KUMAR, J

Dt: 07.09.2017
GM

