

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.22151 OF 2005

ORDER :

The case of the petitioner is that he was appointed in the respondent company as medical sanitary mazdoor on 02.02.1965 and was working at Bellampally area Hospital as peon. The petitioner informed the respondent officials his date of birth as 12.09.1949 and the same was recorded in the service record and the original was kept in the custody of the respondent officials and the copy was obtained by the petitioner. The same date of birth was recorded in Coal Mines Provident Fund records statutorily maintained by the respondent as well as in Board of Secondary Education Examination passed by the petitioner. The management of the respondent also issued a letter on 01.11.2001 intimating the date of birth as 12.09.1949. Though there was no discrepancy in educational certificate, the respondent called upon the petitioner for assessment of age and accordingly assessed the petitioner's age as 56 years as on 01.11.2001 giving the petitioner new date of birth as 01.11.1945 and fixed the date of superannuation as 31.10.2005 vide proceedings dated 25.01.2005. Aggrieved by the same, the present writ petition is filed.

This Court granted interim order on 19.10.2005 and against the same vacate petition is filed on 23.11.2006.

Counter affidavit is filed by the respondent stating that petitioner is a 'workman' coming under the definition of

‘workman’ under the Industrial Disputes Act and has alternative, effective and efficacious remedy for redressal of his grievance under I.D.Act, as such writ petition is not maintainable. It is stated that petitioner when joined respondent company on 02.02.1965, his date of birth was assessed as 12.09.1949 i.e., he was of 16 years at the time of joining the company. According to Rules and Regulations of the company, one should be minimum 18 years of age at the time of joining. Since the petitioner has no proof of age at the time of joining, as per his physical appearance, his date of birth was recorded as 12.09.1949 and admittedly the petitioner was below 18 years when he joined the company on 02.02.1965. In order to rectify the mistake, the petitioner was given notice to appear before the Apex Medical Board for determination of his age and accordingly, his age was assessed as 56 years as on 01.11.2001 and informed that he would be retiring on 31.01.2005. Petitioner accepted the same, but after 4 years, he approached this Court questioning the date of birth recorded by the Apex Medical Board. As per the contention of the petitioner, though petitioner’s education qualification is 7th class, he has not submitted any document in proof of the same and during the year 1985 i.e, after rendering 20 years of service in the respondent company, he appeared SSC examination as a private candidate and possessed SSC certificate and in the said certificate, the date of birth of the petitioner is recorded as per his contention only. It is also submitted that respondent company in order to determine/verify the age of the existing employees who have put in/ likely to put in more than 42 years of service in the

company, circulated a letter dated 09.03.2000 in accordance with the guidelines stipulated in Circular dated 01.08.1988. Accordingly the particulars of 26 employees of Belampalli Area who have put in 42 years and who are likely to put in more than 42 years of service were furnished vide a letter dated 07.08.2000 in which the name of the petitioner is mentioned at Sl.No.8 and they were directed to appear before the Area Age Determination Committee, which intturn referred the matter to Apex Medical Board at Kothagudem on par with other employees. The Apex Medical Board after considering the statement and evidence produced by the petitioner and also by the personal appearance of the petitioner decided the age of the petitioner as 56 years as on 01.11.2001 vide proceedings dated 01.11.2001. The other allegations of the petitioner were denied. Petitioner was informed his date of retirement as 31.10.2005 through letters dated 16.11.2001, 17.01.2003, 22.01.2004 and 25.01.2005. But after a lapse of 4 years, petitioner raised the dispute regarding date of birth by producing the letter dated 25.01.2005. It is further stated that by virtue of interim order dated 19.10.2005 passed by this Court in W.P.No.22151/2005, the petitioner was continued and finally sought for dismissal of the writ petition.

Learned counsel for the petitioner submits that there was no reason for the respondents to review the date of birth of the petitioner, entered into service registry while he joined the respondent company on 02.02.1965. Only when there is variation in date of birth in the service records, the respondents are entitled to invoke Circular No.P.49/4702/IR/1270 dated

01.08.1988. As such, the review of the date of birth of the petitioner after several years is not permitted. He also submits that by virtue of interim orders passed by this Court, the petitioner was continued in service upto 2009. But at the time of retirement, no retirement benefits were paid, on the ground that writ petition is pending. In support of her contentions, she relied on judgment reported in ***Rolla Sathaiah v. Singareni Collieries Co. Ltd., Hyderabad and another***¹ and the order dated 05.08.2014 in W.P.No.13428 of 2014.

In this case, it is to be seen that respondents justified their case of reviewing the date of birth of the petitioner in the year 2001, basing on the letter No.P.34/4184/IR/324, dated 09.03.2000 in accordance with guidelines stipulated in the Circular No.P.49/4702/IR/1270, dated 01.08.1988 calling particulars of employees who are put to 42 years and who are likely to put in 42 years vide Letter No.P.BPA/28A/2581, dated 07.08.2000 and in which petitioner name is found at Sl.No.8. After examination by the Apex Medical Board, the respondent reviewed the date of birth of the petitioner as 01.11.1945.

The relevant extract of the circular dated 01.08.1988 reads as follows:

“(iii) When there is glaring disparity between the date of birth recorded in the Company record and the apparent age of the employee, such cases may be referred to the Apex Medical Board located at Headquarters of the Company for determination of the age, by the Area Age Determination Committee.”

¹ 2014 (4) ALD 226

The clause (iii) goes to show that when there is glaring disparity between the age of the employee with that of the age recorded in the records of the company, such cases may be referred to Apex Medical Board.

In the present case, basing on the said clause the respondent have issued letter dated 07.08.2000 to 26 employees and petitioner has undergone medical test and the date of birth is accordingly fixed. Though petitioner was issued several letters intimating his date of retirement, petitioner kept quite till 2005 and when the impugned notice is issued he raised the objection. The said aspect is not disputed by the petitioner by filing any reply affidavit.

Though the learned counsel for the petitioner submits that only when there is variation in the records, the respondents are entitled for reviewing the date of birth, Clause 3 of the Circular goes to that the date of birth of an employee can be reviewed when there is glaring disparity between the date of birth recorded in the company records and the apparent age of the employee.

In the present case, such a procedure is followed while determining the age of the petitioner. Moreso, the petitioner has accepted the notice issued to him asking him to submit himself before the Apex Medical Board for determination of his age and accordingly Medical Board assessed his age in the year 2001 itself. Until the present impugned notice is issued, petitioner kept quite.

The decisions relied on by the learned counsel for the petitioner has no application to the facts of the case.

Though it is stated the petitioner continued in service till 2009 by virtue of interim orders passed by this Court on 19.10.2005, he was not paid retiral benefits till 2005 on the ground of pendency of the issue before this Court from 2005 to 2009. But the learned Standing counsel for the respondent submits that the petitioner was paid retirement benefits by calculating his service upto the year 2005.

In view of the above facts and circumstances, I do not see any merit in the writ petition for quashing the impugned proceedings issued by the respondents. However, the salaries paid to the petitioner from 01.11.2005 till the year 2009 for the services rendered by him, shall not be recovered. If at all retirement benefits were not paid as alleged by the petitioner, the petitioner is entitled for release of the same interms of the judgment of Madras High Court in ***N.Rajagopal vs. The Secretary To Government*** with interest @ 18% and as laid down by Apex Court in ***Vijay L. Mehrotra vs. State of U.P.And Others***² .

With the above observation, the writ petition is disposed of. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, shall stand closed.

A.RAJASHEKER REDDY, J

22.06.2017
dv

² (2001) 9 SCC 687



