

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

WRIT PETITION No.8745 of 2008

ORDER:

Heard and perused the records.

2. The present Writ Petition came to be filed seeking issuance of writ of Mandamus declaring the action of respondents in issuing proceedings dated 18.03.2008, in not paying the terminal benefits such as P.F. SBT, CCS, Gratuity, EPF, SRBT and leave salary, etc., till the date of his retirement i.e., December, 2006 as illegal and arbitrary.

3. The facts which lead to filing of the present writ petition are as under:

The petitioner herein was appointed as a driver in the respondent-Corporation in the month of December, 1983. Since the date of appointment he has been discharging his duties to the utmost satisfaction of his superiors. While things stood thus, the respondent-corporation served an order dated 23.07.2004, directing the petitioner to submit the nomination forms for P.F., SBT, CCS, Gratuity, EPF, SRBT and Leave Salary, etc. Accordingly, the petitioner submitted all the relevant certificates as required and thereafter retired from his services in the month of December, 2006. It is stated that though the petitioner retired from his services, the terminal benefits and his salary for the months of November and December, 2006 were not paid to him except SBT and CCS amounts. The inaction on the part of respondent-Corporation in paying terminal benefits to the petitioner lead to filing of W.P.No.9199 of 2007. By an order dated 27.04.2007, this Hon'ble Court disposed of the said writ petition directing the first respondent therein to dispose of the representation dated 28.02.2007 made by the petitioner seeking payment of P.F, Gratuity settlement amount, EPF,

etc. taking his date of birth as 19.12.1948 and date of retirement as 31.12.2006. Pursuant thereto, the respondents rejected the petitioner's representation vide proceedings dated 18.03.2008, on the ground that the date of birth of the petitioner in the school certificate was mentioned as 01.07.1944 and hence he ought to have been retired from service with effect from 30.06.2002. Aggrieved by the said order, the present writ petition came to be filed.

4. By an order dated 15.09.2008, this Court in W.P.M.P.No. 11597 of 2008 granted interim direction.

5. A vacate stay petition came to be filed in the year 2016 disputing the averments made in the writ petition. It is stated that the medical officer who examined the petitioner has assessed his date of birth as 19.12.1948, but, however, in the School Certificate, his date of birth was shown as 01.07.1944. It is stated that as per Regulation 19 (2)(b), where a person is unable to furnish satisfactory evidence of his age, it should be assessed by the Medical Officer of the Corporation and the age so assessed or the age as declared by the person, whichever is more shall be accepted as final and the employee shall be assumed to have completed that age on the date of attestation by the Medical Officer. Since the petitioner is said to have produced school certificates wherein the date of birth was mentioned as 01.07.1944, the authorities were justified in taking date of birth of the petitioner as 01.07.1944 and correctly calculated the date of retirement as 30.06.2002.

6. The averments in the affidavit and also the material placed indicate no issuance of notice to the petitioner before altering the date of birth from 19.12.1948 to 01.07.1944. No explanation is forthcoming as to why a notice was not given to the petitioner. It may be true that the petitioner has subsequently produced certificate showing his date of birth as 01.07.1944,

but the medical examination by the doctor indicate that the date of birth of the petitioner is 19.12.1948, which was incorporated in the service register of the petitioner. It is to be noted that the petitioner rendered his services till 27.12.2006. As stated earlier, the respondent-corporation has not issued any notice while altering the date of birth from 19.12.1948 to 01.07.1944 and the same is raised only after the retirement of the petitioner from the service.

7. Having regard to the above circumstances, the writ petition is allowed setting aside the proceedings dated 18.03.2008. The respondent-Corporation is directed to pay all the unpaid terminal benefits to the petitioner treating his date birth as 19.12.1948 instead of 01.07.1944. There shall be no order as to costs.

Consequently, W.V.M.P.No.3870 of 2016 stands dismissed and the miscellaneous petitions, pending if any, shall stand closed in the light of this final order.

13.03.2017
vnb

JUSTICE C. PRAVEEN KUMAR

