

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

WRIT PETITION No.2689 of 2009

ORDER :

Heard learned counsel for the petitioner and learned counsel for the 2nd respondent.

2. The petitioner was appointed as Filling Operator in the 2nd respondent Corporation in the year 1972. However, his services were terminated in the year 1980 on the ground of unauthorized absence from duty. He raised I.D.No.63 of 1985, wherein the Labour Court, by its award, dated 04.11.1987, directed his reinstatement into service. The 2nd respondent filed W.P.No.7055 of 1988 challenging the said award and this Court suspended the award passed by the Labour Court in the said writ petition. A settlement was arrived out of Court on 23.04.1993 and the petitioner was issued a fresh letter of appointment on 19.05.1995, wherein the petitioner mentioned his date of birth as 09.12.1944. When the petitioner attained the age of retirement on 08.12.2002, the 2nd respondent issued a letter, dated 30.12.2002, informing that the petitioner would be retired from service on the said date i.e., on 08.12.2002. The petitioner raised I.D.No.17 of 2003 on the ground that the date of birth recorded by the 2nd respondent was not correct. The Additional Labour Court, Hyderabad, by its award, dated 09.10.2006, dismissed the said I.D. Challenging the same, the present writ petition is filed.

3. Learned counsel for the petitioner submits that when the petitioner produced Ex.W.1 and Ex.W.2 i.e., Transfer Certificate and

bonafide certificate respectively, issued by the Zilla Parishad School, Polanpur, R.R.District, showing his date of birth as 09.12.1951, the Additional Labour Court erred in dismissing the dispute.

4. The Additional Labour Court recorded its finding based on Ex.M.1, wherein the petitioner himself wrote his date of birth as 09.12.1944. Pursuant to Ex.M.1, the letter of appointment was issued under Ex.M.2. When I.D.No.63 of 1985 was allowed the petitioner was given a fresh appointment under Ex.M.4 and the date of birth was recorded as 09.12.1944 in the letter of appointment at clause No.6. Even though the petitioner is aware of such date of birth and his retirement on 08.12.2002, the petitioner did not raise any dispute, but only after receipt of superannuation letter given under Ex.M.7, he protested. The Additional Labour Court, in support of its findings, observed as follows:

It is not in dispute that the petitioner filed I.D.63/85 and an award was passed in his favour under cover of Ex.M-3 and there was a settlement in between them under cover of Ex.M-4 and appointment letter was given to the petitioner under cover of Ex.M-4 in pursuance of letter cover under M-5 and based on the documents his date of birth recorded as 9-12-1944 and the same was mentioned in the fresh letter of appointment at clause No.6 and specifically informed that he will be retired from service on attaining age of 58 years. Accordingly they gave retirement on 8-12-2002. There is sufficient information even in the year 1994 about his date of birth recorded in the records of the company but he did not take appropriate steps and after receipt of the superannuation letter given to the petitioner under Ex.M-7 he come forward with a application covered under Ex.M-4 and Ex.M-5 which

is refused by the petitioner under cover of Ex.M-8, Ex.M-9 is Xerox copies of Ex.W-1 and Ex.W-2. Apart from that he was given letter of appointment 19-5-1993 which bears the signature i.e., on Ex.M-4 and he signed Ex.M-5 accepting the conditions therein. It is admitted that in Ex.M-5 his date of birth is mentioned as 9-12-1944 but he is stated that he has not seen the date of birth in Ex.M-5. However the evidence on record is not sufficient that his date of birth is 9-12-1951 as Ex.W-1 and Ex.W-2 are not sufficient. Moreover, some were examined to prove besides he failed to prove that his educational qualification as 11th class discontinuation. There is no other record or birth certificate, either from revenue authorities or from birth and death register office to prove his date of birth nor examined any persons who are aware about his actual date of birth. There is no other reliable evidence except his sole testimony. If really the petitioner shown the reliable document, they would have recorded the date of birth in the company records moreover the documents before this Tribunal are not sufficient to prove the date of birth. He has not filed any civil suit evidencing to declare his date of birth as 9-12-1951 but not 9-12-1944.”

5. In view of the findings recorded by the Additional Labour Court, this Court is not inclined to interfere with the award.
6. Accordingly, the writ petition is dismissed.
7. Miscellaneous Petitions pending, if any, shall stand closed. No costs.

A. RAMALINGESWARA RAO, J

28th June 2017.

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