

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

W.A.No.295 OF 2018

JUDGMENT: (ORAL)

(per Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present appeal, the appellant has challenged order dated 13.11.2017 passed in WP No.35129 of 2017 by the learned Single Judge of this Court whereby the petition filed by the appellant has been dismissed.

2. Brief facts of the case are that:

The appellant was initially appointed as Driver in the respondent Corporation on 28.11.1987 and he was removed from service on 20.10.2009 on the ground that driving licence produced by him was fake. However when the respondent Corporation issued a paper advertisement on 18.05.2005 giving an opportunity to ex-drivers, the appellant reported to duty on the basis of a fresh driving licence. He was issued an order on 20.05.2005 with a letter of provisional engagement as driver on a contract basis in Hyderabad city region. He was subjected to medical examination and he was found fit. On 23.12.2005 the appellant was directed to report before the concerned Depot Manager for engaging him as a driver on contract basis. Accordingly the appellant reported for duty and when he is sought to be retired on 30.11.2017 on the basis of date of birth recorded as 02.11.1959 he has filed Writ Petition before the learned Single Judge.

3. It is not in dispute that after removal from the service on 20.10.1989 the selection was made and the appellant is working based upon the genuine driving licence and for the date of birth he has produced SSC certificate wherein his Date of birth is recorded as 25.04.1967.

4. The respondents are relying upon the date of birth 02.11.1959. Base of the respondents to retire the appellant on 30.11.2007 is that, in earlier selection, medical officer recorded date of birth of the appellant as 02.11.1959, whereas, in the present selection, the appellant has produced SSC certificate, wherein his date of birth is recorded as 25.04.1967.

5. It is not the case of the respondents that the SSC certificate produced by the appellant is not genuine. It is also not the case of the respondents that the driving licence of the appellant based upon his present selection is made also not genuine. Therefore there is no ground to rely upon the date of birth recorded by the medical officer as 02.11.1959. Even otherwise, in a medical jurisprudence, date of birth cannot be determined by a medical officer, however only by ossification test, only age can be determined, with two years, plus or minus, but not exact date of birth. Therefore, show cause notice dated 01.06.2017 issued by the respondents to retire the appellant on 30.11.2017 is baseless.

6. It is pertinent to mention here that vide order dated 27.06.2018 while granting last opportunity to the respondents to produce SSC certificate of the appellant, it was made clear that, failing which, the Court shall rely upon SSC certificate produced by the appellant, wherein his date of birth is recorded as 25.04.1967. However, the respondents failed to produce any SSC certificate other than the certificate is produced by the appellant.

7. In view of the above discussion, we hereby set aside the order dated 30.11.2017 passed in W.P.No.35129 of 2017 by the learned Single Judge. Consequently, the respondents are directed to take back the appellant into service as driver and continue in service till the date of retirement as per his date of birth entered in his SSC certificate, with all consequential benefits.

8. Accordingly, the Writ Appeal is allowed. No order as to costs.

Miscellaneous Petitions, if any pending, shall stand closed.

SURESH KUMAR KAIT, J.

ABHINAND KUMAR SHAVILI, J.

Date : 08-08-2018

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