

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.29451 of 2009

ORDER:

This writ petition is filed seeking following relief :-

“.... to issue a writ or order or direction especially one in the nature of Writ of Mandamus

(i) declare the impugned proceedings No SRP 1/W/ 14/ 2009/ 312 dt.3-2-2009 issued by the 3rd respondent as illegal, arbitrary and set aside the same.

(ii) consequently direct the respondents to continue the petitioner in service upto 30-6-2013 duly granting all other consequential benefits...”.’

Heard Mr.K.Vasudeva Reddy for petitioner and Sri Nandigam Krishna Rao, learned Standing Counsel for respondents.

It has been contended by the petitioner that he was initially appointed as Badli Filler in the 1st respondent Company on 07.08.1982 and later on got several promotions such as Shot Firer, Mining Sirdar etc. Presently, he is working as Sr.Mining Sirdar. While the petitioner was discharging his duty, the respondents have issued retirement notice on 03.02.2009 informing that the petitioner is going to retire on 30.06.2010. Challenging the same, the present writ petition is filed.

It has been contended by the petitioner that as per his S.S.C. certificate, which was issued on 20.07.1970, his date of birth is clearly mentioned as 16.06.1953 and therefore, he is entitled to be continued in service upto 30-06-2013. But, the action of respondents in retiring him three years prior to his actual date of birth is arbitrary and illegal.

He further contended that this Court was pleased to consider the entire case and was pleased to grant an interim order on 29.06.2010 directing that the petitioner be continued in service. By virtue of the interim order, the petitioner has worked upto 30.06.2013 and he had retired from service on 30.06.2013 on attaining the age of superannuation.

The petitioner further contended that the only issue is about payment of terminal benefits and service rendered by petitioner upto 30.03.2013 should be calculated and terminal benefits should be paid accordingly to the petitioner.

Learned Standing Counsel appearing for respondents contended that in the fag end of service, the petitioner has approached this Court seeking correction of date of birth and the writ petition should be dismissed only on delay and laches, apart from that, at the time of appointment, the petitioner has not produced any certificates and was subjected to medical examination and as per the Medical Report, the Doctor has certified the age of the petitioner as 32 years as on 24.06.1982 and the respondents have rightly issued retirement notice on 03.02.2009 to the effect that the petitioner would be retiring from service on 30.06.2010 and no illegality is committed by respondents and even if the petitioner was continued by virtue of interim order, no relief can be granted to the petitioner, as the date of birth of petitioner was recorded by the competent medical board and the medical board had certified that the petitioner has 32 years as on 24.06.1982. Accordingly, the respondents have issued retirement notice and the actual date of retirement of petitioner should be treated as

30.06.2010 and no relief can be granted for the service rendered by the petitioner beyond 30.06.2010 and the writ petition is liable to be dismissed.

This Court, having considered the rival submissions, is of the considered view that the petitioner was allowed to work upto 30.06.2013 and the counsel appearing for petitioner has drawn the attention of this Court to Page No.29 of the material papers filed alongwith counter, wherein Implementation of Instruction No.76 proceedings for age determination/ verification of age of employee guidelines are there and as per the said guidelines, review/determination of date of birth in respect of existing employees, should be as follows:-

“(a) In the case of existing employees Matriculation Certificate or Higher Secondary Certificate issued by the recognized Universities or Board or Middle Pass Certificate issued by the Board of Education and/ or Department of Public Instruction and admit cards issued by the aforesaid Bodies should be treated as correct provided they were issued by the said Universities/ Boards/institutions prior to the date of employment.

(b) Similarly, Mining Srdarship, Winding Engine or similar other statutory certificate where the Manager had to certify the date of birth will be treated as authentic. Provided that where both documents mentioned in (i) (a) and (i) (b) above are available, the date of birth recorded in (i) (a) will be treated as authentic.”

A perusal of the said guidelines would indicate that existing employees, who have passed Matriculation Certificate or Higher Secondary Certificate issued by the recognized Universities or Board or Middle Pass Certificate issued by the Board of Education and/ or Department of Public Instruction and admit cards issued by the aforesaid Bodies should be treated as correct provided they were

issued by the said Universities/ Boards/ Institutions prior to the date of employment.

Admittedly, in the instant case, the petitioner has passed S.S.C. and he was issued SSC Certificate on 20.07.1970, which was issued prior to the appointment of petitioner with the respondents and the said Certificate discloses that the date of birth of the petitioner is recorded as 16.06.1953. Apart from that, even Shot-Frer's Certificate dated 26.02.1988 and Srdar's Certificate dated 30.08.1991 would clearly indicate the date of birth of the petitioner as 16.06.1953.

In view of the said guidelines, the petitioner is entitled to be continued in service upto 30.06.2013, as his date of birth was recorded as 16.06.1953 in SSC Certificate, Shot-Frer's Certificate dated 26.02.1988 and Srdar's Certificate dated 30.08.1991.

Therefore, the writ petition is allowed by setting aside the impugned notice dated 03.02.2009. The respondents are directed to settle the terminal benefits of the petitioner by duly treating his service upto 30.06.2013, with all consequential benefits. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVIL, J

10-09-2018
Prv