

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION NO.17293 OF 2007

ORDER:

1. This writ petition is filed seeking to issue a writ of mandamus declaring the action of the respondents in retiring the petitioner from service on 31.12.2006 instead of continuing him upto 31.12.2012 as arbitrary and illegal, and consequently, to set aside the order of the 2nd respondent dated 27.10.2006 and 4.6.2007 and to continue the petitioner as General Mazdoor upto 31.12.2012 and to pay all consequential benefits.

2. Heard Sri Kurti Bhaskara Rao, learned Counsel for the petitioners and the learned Standing Counsel for the respondents.

3. It is the case of the petitioner that he was appointed as Electrician Category V in the respondent-company in the year 1973 and in the year 1994, while he was on duty, his right hand was amputated due to electrification and he took treatment and thereafter, he was de-promoted and posted as General Mazoor in the year 1995. Further, it is the case of the petitioner that his date of birth was 7.9.1952 and the said fact was recorded in his X class certificate and Degree Transfer certificate, and when the 2nd respondent informed the petitioner about the date of his retirement as 31.12.2006, the petitioner filed all his documents and requested to correct his date of birth, if it was wrongly entered. In spite of the same, the 1st respondent passed order 7.10.2006 stating that the petitioner should be retired on 31.12.2006. Hence, the petitioner filed W.P.No.25354 of 2006 questioning the order of the respondents dated 27.10.2006 in ordering his retirement before six years of his actual service, and the said writ petition was disposed of on 12.2.2007 directing the respondents to place the

duplicate certificate of SSC issued by the Board of Secondary Education and Transfer Certificate issued by the Government College, Mancherial before the age Determination committee, and to take a fresh decision, after conducting an enquiry into the matter. Pursuant to the same, on 29.3.2007, the age Determination Committee passed order on 4.6.2007 confirming unilaterally that the date of birth of the petitioner was 14.12.1946, without application of mind, and consequently, he retired on 31.12.2006. Hence, the petitioner filed this writ petition.

4. During the pendency of this writ petition, the writ petitioner died and hence, his legal heirs were brought on record as petitioners Nos.2 to 5.

5. In the counter, it is stated that at the time of appointment, the petitioner did not submit any valid documentary proof in support of his date of birth or academic qualifications and therefore, the petitioner was subjected to Age assessment in accordance with the Mine Rules and that the age of the petitioner was assessed by the Medical Officer at the time of Medical Examination as 25 years as on 14.12.1971 and therefore, the date of retirement of the petitioner falls on 31.12.2006. It is further stated that the petitioner either at the time of assessment of age or at the time of recording the age in the service records did not protest to the age assessed by the Medical Officer, but now, at the fag end of service raised a dispute over the same. It is further stated that in compliance with the order dated 12.2.2007 in W.P.No.25354 of 2006, the case of the petitioner was reviewed by the Area Age Determination Committee on 29.3.2007 and after examination of the petitioner's case, the Committee confirmed the age of the petitioner as 25 years as on 14.12.1971 and accordingly, the petitioner was retired from service on 31.12.2006 and that there are no merits in this writ petition.

6. The 2nd petitioner, who is the wife of the writ petitioner, filed reply affidavit stating that the respondents never disputed the certificates placed by her husband and therefore, the certificates issued by the Board of Secondary Education in the year 1970 became ultimate proof to the age of her husband and as on 31.12.2006, the age of her husband-writ petitioner was 54 years and therefore, the pre-mature retirement of the writ petitioner is illegal.

7. This Court having considered the rival submissions made by the parties came to a conclusion that the orders passed by the 2nd respondent vide proceedings dated 4.6.2007 are not proper and not in confirmation with the orders passed by this Court in W.P.No.25354 of 2006, dated 12.2.2007. This Court in W.P.No.25354 of 2006 had directed the respondents to take a fresh decision and pass orders by duly taking into account the SSC certificate issued to the petitioner by the Board of Secondary Education and the Transfer Certificate issued by the Government College, Mancheri. In compliance with the said orders of this Court, the respondents vide proceedings dated 4.6.2007 confirmed the age as determined by the earlier Age Determination Committee and came to a conclusion that the date of birth of the petitioner recorded as 14.12.1946 by the earlier committee holds good.

8. Perusal of the impugned order discloses that all the contents were reiterated in the first four paragraphs. The actual portion starts with the content that “the committee after verifying the educational certificates produced by the petitioner and based on the service records, petitioner’s physical appearance and clinical tests, confirmed his age as 25 years as on 14.12.1971.” Except that, to what kind of tests the petitioner was subjected and what kind of physical appearance test was conducted to determine the

age of the petitioner, which was supposed to have been done during 2007, and on what basis the respondents came to conclusion that the petitioner is of 25 years as on 14.12.1971, and what kind of procedure adopted by the respondents, were not disclosed. Further, it was also not disclosed as to what weightage was given to the SSC certificate issued by the Board of Secondary Education and the transfer certificate issued by the Government College, Mancherial.

9. Perusal of the SSC certificate of the petitioner, which is filed along with the writ petition at page No.16 as material paper, would clearly show that the petitioner passed SSC examination in the year 1970 i.e., one year prior to his joining as General Mazdoor in the respondent-organization. When there is documentary proof to establish that the date of birth of the petitioner was recorded as 7.9.1952 prior to his joining in the respondent-organization, the said date of birth of the petitioner cannot be denied and he ought not to have been compelled to retire prematurely based upon the age that was recorded erroneously by the age determination committee without following the accepted principles while determining the age.

10. For the reasons recorded above, this Court is of the view that the petitioner is entitled to be continued upto 31.12.2012. The respondents are directed to take the date of birth of the deceased petitioner as per the SSC certificate i.e., as 7.9.1952 and based on the said date of birth, the petitioner should be given all the service benefits. The period from 31.12.2006, the date on which the writ petitioner was made to retire, till 31.12.2012, the actual date of retirement of the writ petitioner, shall be construed as the petitioner was in service. All the consequential benefits shall be released to petitioners Nos.2 to 5 who are legal heirs of the

deceased petitioner, within a period of three months from the date of receipt of a copy of this order.

11. With the above direction, the Writ Petition is allowed. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

(ABHINAND KUMAR SHAVILI, J)

Dated. 5.1.2018
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THE HON'BLE Mr. ABHINAND KUMAR SHAVILI



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