

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.3940 OF 2010

Date: 03.04.2018

Between:

Sri Jakkam Veeraiah, s/o. Lachaiah, Occu: Pump Operator,
E.C.No.1136155, GDK 8A-INCLINE, R/o. Qtr.No.ST-2, 3313,
8 Incline Colony, Godavari Khani, Karimnagar district.

.....Petitioner

and

Government of India, Ministry of Labour and Employment
Rep.by its Desk Office (C-II), Rafi Marg, New Delhi and
another.

.....Respondents



The Court made the following:

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ORDER:

According to petitioner, he was appointed as Baddi Worker on 13.03.1978. At the time of joining service, his age was assessed as 22 years. His service record was destroyed in a fire accident and in the year 2004, his age was shown as 33 years. According to petitioner, he attains age of 60 years in October 2016, whereas he was retired on 01.10.2008. Aggrieved thereby, he filed W.P.No. 16650 of 2009. Pursuant to directions of this Court in above writ petition, without informing the petitioner, Apex Medical Board (AMB) was constituted and vide office order dated 30.10.2009 the Board affirmed the age of petitioner as 60 years and removed his name from the rolls of employment. The office order dated 30.10.2009 is assailed in this writ petition.

2. Heard Ms. G. Sudha, learned counsel for petitioner and Sri Nandigama Krishna Rao, learned standing counsel for respondents.

3. Learned counsel for petitioner contends that petitioner was retired from service by taking into consideration wrong age recorded, petitioner was entitled to continue in service till 30.10.2016. She would further submit that petitioner was not informed about the constitution of AMB as per the undertaking given in W P No. 16650 of 2009 and without subjecting the petitioner to medical examination, based on their own record the assessment was made. She would further submit that even on 11.11.2010 the assessment was not made properly. She would

therefore submit that petitioner was humiliated in the matter of determination of age, caused injustice, was made to retire early and suffer for no fault on him. She would further submit that by withholding the retirement benefits, grave injustice is caused to the petitioner and his family.

4. According to learned standing counsel, at the time of joining service petitioner did not produce any proof of his age. His age was assessed by Medical Officer as 33 years as on 02.03.1978 and same was recorded in all relevant records, including his service book. He vehemently denies allegation of subsequent alteration of his age. He would further submit that petitioner refused to receive notice of constitution of AMB and on the date fixed did not attend before the Board to assess his age. Accordingly, the AMB assessed the age of petitioner based on record and determined his age as 60 years. He would submit that as per interim order of the Court in this Writ Petition, petitioner was examined by the AMB on 11.11.2010 and Board assessed his age as 61 years. He would, therefore, submit that age of petitioner was properly assessed.

5. Material on record would show that in W.P.No.16650 of 2009, learned standing counsel representing the SCC Ltd., informed that AMB would be constituted to determine the age of petitioner. Having regard to this statement, Court directed constitution of the AMB to determine the age of petitioner. Though Board meeting was held on 29.10.2009, no physical assessment was made as petitioner did not appear before the Board. Pursuant to interim order dated 23.06.2010 of this Court in this writ petition, petitioner was examined by the AMB on 11.11.2010. The

Board affirmed earlier recorded date of birth. Along with additional counter affidavit dated 04.12.2017 copies of Medical reports are filed.

6. After going through the material enclosed to additional counter dated 04.12.2017, on 12.12.2017 this Court passed following order:

“It is the stand of the respondents that after examining the petitioner, his age was assessed and in terms of the said assessment, petitioner was found to be rightly retired from the service in the year 2009. Copies of the medical reports are filed. The assessment report contained signatures of CGM (R&D), AGM (Personnel) (IR) Wing and Chief Medical Officer. However, it does not contain the details of the nature of procedure for assessment of age, except saying that as per the assessment of the Board and X-ray findings age was taken as 61 years. Additional counter affidavit do not explain as to how the age assessment is made by the Apex Medical Board, composition of the Apex Medical Board and the laid down procedure to conduct examination of employees to assess their age. It is also appropriate to note, at this stage, that in W.P.No.1502 of 2009, the petitioner therein was also assessed based on the X-ray report. The Court also noticed that there was no Radiologist present and the two doctors, who examined, were only MBBS Degree holders. Therefore, the Court directed the examination of the petitioner in Osmania General Hospital. Ordinarily, age assessment should be made by Radiologist and Orthopedic Surgeon as well as ENT Surgeon.

The matter is adjourned to 19.12.2017 to place on record the manner of assessment of age, the instructions already notified, the specialists composing of the committee which assessed petitioner and any record available with reference to the assessment made by observing the parameters of assessment of age, if necessary, an affidavit may be filed explaining the procedure.”

7. Pursuant to above order, affidavit deposited by Chief Medical Officer is filed. According to his deposition, Doctor Siripuram Srinivas, a member of the Board was Radiologist. Paragraph-4 of this affidavit reads as under:

“With regard to the procedure of assessment of age is concerned, a Radiological Test was conducted by Dr. Siripuram Srinivas, Specialist in Radiology. Upon an examination of radiographs of Skull, Neck, Sternum (breast bone with X-ray No.12771-10) assessed the suggestive age of the petitioner is more than 60 years. That apart, in the capacity of myself being Doctor and having specialized in Orthopedics made my notings which included pre-retirement medical examination the petitioner had undergone one year before his retirement. Also his physical appearance i.e., wrinkles on forehead, cheeks, eyes etc., and after going through the radiological age as already brought out above assessed the age of the petitioner as 61 years as on 11.11.2010. A copy of the noting is also filed herewith as material paper.”

8. As noted from further averments, assessment exercise was conducted by Radiologist and later reviewed by deponent. Deponent is Orthopedic Surgeon.

9. Documents enclosed to this affidavit would show that assessment was made only by Radiologist (document dated 11.11.2010 filed at page 73). A reading of this report also does not conclusively establish correct age of petitioner. Document at page 76 is age assessment report signed by Medical Officer. It does not mention age assessed. Further on 11.11.2010, deponent prepared general evaluation report and at the end of the report records that age assessed by Radiologist is 61 years. It does not even show that deponent has made independent assessment. Along with

additional counter dated 04.12.2017, age assessment report (two pages) is enclosed at pages 55 and 56. it is seen from this report that the AMB comprised of CGM (R&D), AGM (Personnel) (IR Wing) and Chief Medical Officer. Board records age as per X-ray findings, probably by referring to Radiologist report. It is clear from these documents that Radiologist was not part of the AMB. It appears that age assessment is normally made by a team of Doctors, comprising of Dental Surgeon, Radiologist, Ophthalmologist, ENT Surgeon, Orthopedic Surgeon and Occupational Health Physician. There would be separate reports from each of these Specialists. Document filed at page no.74 is a copy of assessment report of another employee by name B.Poshalu which was signed by all specialist doctors. This assessment report and proforma copies of assessment by specialist doctors enclosed to affidavit deposed by Mr. K. Prasanna Simha from page Nos.81 to 86 would show how assessment is required to be made.

10. Petitioner did not have proof in support of his age. He claims to have attained age of 60 years only in the year 2016 whereas, he was erroneously retired earlier. He disputes age assessed by SCCL. When W P No. 16650 of 2009 came up for consideration, this Court was informed that the company decided to refer petitioner to AMB to assess his age. Thus, employer volunteered to assess the age of petitioner on its own. However, proper assessment is not made. It was a perfunctory exercise undertaken, apparently, as an eye wash. Thus, age as assessed pursuant to interim orders is not valid in law.

11. Determination of age and fixation of date of birth has a very important role in the public service. It determines various aspects of service including date of superannuation. It being a crucial aspect of service and having volunteered to assess age of petitioner, the SCCL could not have undertaken a perfunctory exercise.

12. At this stage, learned counsel for petitioner requests the Court to refer the case of petitioner to any other Medical Board/ leading Medical Institution. However, learned standing counsel submitted that whenever there is a dispute regarding the age of a workman, the same should be referred to the Apex Medical Board and by placing reliance on the decision of Division Bench in W.A.No.1341 of 2009 would contend that referring to any outside expert is not valid in law. In the said case, learned single judge referred to the Forensic Expert. Having regard to the history of litigation and manner of handling age assessment by the SCCL earlier, this Court is of the opinion that petitioner age assessment should be undertaken by independent team of Medical Officers who are not associated with respondent company, except Chief Medical Officer.

13. While hearing the case on 20.02.2018, learned counsel for petitioner contended that in spite of several representations made retirement benefits are not settled and paid, causing lot of hardship. On the contrary, learned standing counsel submitted that no proper application was submitted by petitioner. He further submitted that petitioner continues to occupy quarter allotted to

him and has not paid rent, electricity charges and other charges. However, on instructions, he would submit that if he appears before the competent authority, his retirement papers would be processed. Petitioner, who is present in the Court, agreed to appear. Taking note of these submissions, the Court directed petitioner to appear before the General Manager, Ramagundam on 21.02.2018 at 11.00 A.M., and to submit all relevant papers.

14. Learned standing counsel reported that all claims of petitioner are being processed. He has produced documents evidencing processing of claims. It is seen from these documents that on 21/22.02.2018, proposals are sent to the Regional Commissioner, CMPF Office to settle PF claims. On 21.02.2018 letter was addressed to Secretary to SCCL Employees Gratuity Scheme for settlement of gratuity. However, in the proceedings dated 24.02.2018, it is stated that petitioner gratuity claim would be settled after vacation of the quarter and penal rent is paid.

15. The respondent company is vavouring on payment of retirement benefits contending that petitioner has not vacated the quarter allotted to him. Learned counsel for petitioner contended that as illegally petitioner was retired from service 6 years prior to his age of superannuation and as he is fighting litigation, he was entitled to occupy the quarter. However, no material is placed on record to show that steps were taken to evict the petitioner. Be that as it may, eviction from quarter is entirely different issue. Respondent company could not have linked settlement of retirement benefits to vacation of quarter.

16. Writ Petition is disposed of with following directions:

- A) i) The General Manager, Ramagundam-II Division, SCCL/2nd respondent is directed to constitute team of specialist Doctors working in the State Government service comprising of Dental surgeon, Radiologist, Ophthalmologist and ENT surgeon. As Chief Medical Officer being Orthopedic Surgeon, shall be part of this team. The General Manager shall fix a date in advance after obtaining consent from all the Doctors comprising of the team and inform the petitioner in advance about the date of medical examination. Petitioner shall furnish his address on which communication can be given. Petitioner shall also furnish Mobile Number to which SMS can be sent on the date of medical examination. The communication shall be sent to postal address and by way of SMS on mobile phone, furnished by petitioner. The petitioner shall appear before the team of specialist Doctors on the date notified to him and shall undergo all the tests required by the team of Doctors to make such assessment.
- ii) On assessment by the team of specialist Doctors, if it is found that petitioner's age was wrongly assessed, respondent shall take further steps to grant all consequential benefits flowing out of such age determination treating him as if in service till he attained the age of superannuation as per revised assessment.
- iii) In such an event petitioner is entitled to all monitory and attendant benefits and also entitled to interest @ 10% from the date i.e., when he was retired till date of payment of arrears.

iv) All those benefits should be settled within a period of two months from the date of assessment and report by the team of specialist Doctors.

B) i) Petitioner is occupying quarter allotted to him when he was in service. Ordinarily a person has to vacate the quarter on retirement from service. Even assuming petitioner has valid claim regarding the wrong assessment of age, he could not have continued occupying the quarter without the consent of the employer. At any rate, even according to petitioner his age of retirement was in October, 2016, thus, after October, 2016 without consent of the employer, he could not have continued in the quarter. However, in the case on hand the respondent company has not settled his retirement benefits till date. No justification is shown by the respondent company except harping that he has not vacated the quarter. No steps were taken to evict him also. Learned standing counsel stated that rent and electricity charges are not paid.

ii) Petitioner is present in the Court. He would submit that rent and electricity charges could not be paid as retirement benefits were not settled and agreed to vacate the quarter after completion of age determination and would pay arrears of normal rent and electricity charges after settlement of his retirement benefit.

iii) Further, since petitioner is in occupation of the quarter and age determination is now referred to team of specialist Doctors, he may be allowed to continue in the quarter till team of specialist Doctors furnishes the report and retirement benefits are settled.

iv) SCCL shall assess the rent and other charges payable by the petitioner from the date of retirement till he vacates the quarter. On making such

assessment, petitioner shall reimburse the amounts. It is open to the respondent company to adjust the amounts towards house rent and other charges from the retirement benefits payable by the company to the petitioner but not from statutory benefits, such as gratuity and provident fund and if any short fall in amount due, it may place a demand on petitioner.

v) Having regard to history of litigation and non-settlement of retirement benefits, SCCL cannot levy penal rent and rent payable is only normal rent. It is also open for the respondent company and petitioner to negotiate for settlement of arrears of house rent and other charges payable by him on the quarter occupied by him.

Miscellaneous petitions, if any, pending in this writ petition shall stand dismissed. There shall be no order as to costs.

Date: 03.04.2018
Kkm/tvk

JUSTICE P.NAVEEN RAO

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