

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.28008 of 2017

ORDER

This writ petition is filed seeking the following relief:

“to issue a Writ or order or direction more particularly in the nature of Writ of Mandamus declaring the action of the 4th respondent in issuing impugned notification No.P1/255(1)/2016-DVK, dated 20-01-2017 in altering the petitioner date of birth as 17-09-1961 instead of 16-07-1969 is bad in law, arbitrary, illegal, unjust and unreasonable against the principles of natural justice and without jurisdiction and set aside the same and declared petitioner date of birth as 16-07-1969 by direct the respondents to continue the petitioner in service till attaining superannuation with all consequential and attendance benefits and pass such orders as it may deem fit and just.”

Heard Sri K.Venkateswarlu, learned counsel appearing for the petitioner and learned Standing Counsel appearing for the respondent-Corporation.

It is the case of the petitioner that he worked as a Cleaner in a private bus and after nationalization of the routes, his case was recommended for absorption in the respondent-Corporation. At the time of recommending his case, the owner of the bus has assessed the age of the petitioner as 30 years. Thereafter, the petitioner was subjected to medical examination and the Civil Assistant Surgeon, RTC Hospital, Tarnaka, assessed his age as 22 years as on 07.10.1991 and he

was appointed as a casual cleaner in the respondent-Corporation and his date of birth was entered as 16.07.1969 in the service register. After rendering considerable length of service, he was promoted as a Black Smith and he is discharging his duties to the best satisfaction of his superiors. While so, the Depot Manager-4th respondent with the permission accorded by the Managing Director, has issued a show cause notice on 29-12-2016, whereunder an attempt was made to alter the date of birth of the petitioner from 16.07.1969 to 17.09.1961 and the petitioner was asked to submit his explanation within 7 days. The petitioner has submitted his explanation contending that the date of birth once entered in the service register cannot be altered at the far end of the service and requested the respondents not to alter his date of birth. But the respondents have passed the impugned order dated 21.01.2017 by altering the date of birth of the petitioner from 16.07.1969 to 17.09.1961 in terms of Clause 19(2)(b) of TSRTC Employees (Service) Regulations, 1964 (for short “the Regulations”). Challenging the same, the present writ petition is filed.

Learned counsel appearing for the petitioner placed reliance on Regulation 19(a) and 19(2)(b) and 19(3) of the Regulations, which reads as follows:

“19. Date of Birth: (1) Every person on entering the service of the Corporation shall

declare his date of birth which shall not differ from any declaration, express or implied, made by him for any public purpose before entering such service. For this purpose, the date of birth as recorded in a school or college certificate shall be adopted without any medication.

(2)(a) When the year or year and month of birth are known but not the exact date, the 1st July or the 16th of that month respectively, shall be treated as the date of birth.

(b) Where the person concerned is unable to furnish satisfactory evidence of his age, it should be assessed by a Medical Officer of the Corporation and the age so assessed or the age as declared by the person, whichever is more, shall be accepted as final and the employee shall be assumed to have completed that age on the date of attestation by the Medical Officer.

(3) The date of birth as determined by the appropriate provisions of the preceding clauses shall be recorded in the service register. The date so recorded shall be held to be binding and no alteration of such date shall be permitted subsequently. It shall however, be open to the Corporation in the case of a Class I employee, and to the Managing Director in the case of any other employee under his administrative control, to cause the date of birth to be altered—

(i) where in his opinion it had been falsely stated by the employee to obtain and advantage otherwise in admissible, provided that such alteration shall not result in the

employee being retained in service longer than if the alteration had not been made: or
(ii) where in the case of illiterate staff, the Managing Director is satisfied that a clerical error has occurred.

Learned counsel submits that the owner of the private bus has given the approximate age of the petitioner as 30 years during 1991, and the petitioner was subjected to medical examination by a Civil Assistant Surgeon of the respondent-Corporation, who has assessed the age of the petitioner as 22 years as on 16.07.1969. It is submitted that based upon the assessment made by the Civil Assistant Surgeon, the respondents have entered the date of birth of the petitioner as 22 years in his service register and the petitioner has not made any fraud or misrepresentation in furnishing his date of birth. It is further submitted that after the petitioner has rendered two and half decades of service, the respondents are now trying to alter his date of birth by invoking 19(2)(b) of the Regulations. It is further submitted that Regulation 19(3) can be exercised in cases where a false attempt is made by the employee to take advantage of the entry otherwise than permissible, provided such alteration shall not result in the employee being retained in service longer than the service if the alteration had not been made. But, in the instant case, the said Regulation has no application as the petitioner never made any false claim. It is

prayed that respondents ought not to have invoked Regulation 19 (3) and altered the date of birth of the petitioner that too at the fag end of his service and therefore, the impugned order is liable to be set aside and the respondents be directed to continue the petitioner in service by duly taking into consideration his date of birth as 16.07.1969 with all consequential benefits.

Learned Standing Counsel appearing for the respondent-Corporation contends that as far as Regulation 19(2) is concerned, the Corporation has got every power to change the date of birth of the petitioner. Regulation 19(2) makes it clear that where an employee is unable to furnish his age, it should be assessed by the Medical Officer of the Corporation and the age so assessed by the Medical Officer shall be accepted by the employee as final. It is contended that in view of two different dates of birth, i.e., one given by the previous employer of the petitioner and the other assessed by the Medical Officer, the respondents have taken into consideration the date of birth of the petitioner as 17.9.1961 as per Regulation 19(3), and passed the impugned order. It is further contended that the respondents have not committed any irregularity and that there are no merits in the writ petition and the same is liable to be dismissed.

Having considered the rival submissions made by the learned counsel on either side, this Court is of the considered view that when the petitioner was subjected to medical examination and the Civil Assistant Surgeon has assessed the age of the petitioner as 22 years as on 16.07.1969, the respondents have entered the date of birth in the service register and appointed him as Cleaner *vide* proceedings dated 31.10.1991. Now, the respondents cannot alter the date of birth of the petitioner by invoking Regulation 19(2)(b) or 19(3) of the Regulations. No doubt, power is vested with the respondents to correct the date of birth provided that the employee has furnished false claim in order to gain undue advantage. In the instant case, the petitioner has not submitted any false claim. Regulation 19(2) deals with clerical errors. But, the petitioner has not committed any clerical error. The date of birth of the petitioner was recorded based upon the assessment made by the Civil Assistant Surgeon as 22 years as on 16.07.1969. The respondents could not produce any other date of birth of the petitioner to demonstrate that it is a clerical error except relying on the recommendations made by the previous employer that the age of the petitioner was 30 years at the time of entry into service. There is no assessment made by the petitioner with regard to

his age independently at the time of his entering into service except stating that he is 30 years old. Based upon the assessment made by the Civil Assistant Surgeon only, the date of birth of the petitioner was entered into the service register as 16.07.1969. Now, the respondents cannot alter the said date of birth by invoking Regulation 19(2)(b). Therefore, the impugned order is liable to be set aside.

Accordingly, the Writ Petition is allowed and the impugned order dated 20.01.2017 is set aside. The respondents are directed to continue the petitioner in service by taking into consideration his date of birth as 16.07.1969. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

31st July, 2019
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