

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.12599 of 2019

ORDER:

With the consent of both the parties, this Writ Petition is disposed of at the admission stage.

This Writ Petition is filed for the following relief:

“.....Writ of Mandamus declaring the action of the 3rd respondent in issuing the impugned notification No.P1/255 (01)/2016-MLG dated 19-12-2016 and consequential Notification No.P1/693 (05)/2019-MLG dated 1-1-2019 in altered the petitioner date of birth in the fag end of retirement as 1-7-1961 instead of 2-9-1962 by retiring the petitioner on 30-6-2019 is bad in law, arbitrary, illegal, unjust and unreasonable against the principles of natural justice and without jurisdiction and declared petitioner date of birth as 2-9-1962 which was altered as 1-7-1961 and setaside the same and consequently direct the respondents to continue the petitioner in service till attaining the age of superannuation with all consequential and attendance benefits and pass such orders.....”

Heard Sri K.Venkateswerllu, learned counsel for the petitioner and Sri A.Ravi Babu, learned Standing counsel for the respondent-Corporation.

It has been contended by the petitioner that he is an illiterate person, but having got sufficient experience in driving, he was selected and appointed as a casual driver in respondent-Corporation in the year 1990. At the time of appointment, the petitioner has declared his age as 28 years as on 14.06.1989, but due to unsatisfactory evidence of his

age, the petitioner was referred to the Medical Officer of the Corporation, who assessed the age of the petitioner as 30 years and determined the date of birth of the petitioner as 02.09.1962, vide proceedings dated 02.09.1992 and accordingly, the date of birth of the petitioner was entered in Service Register as 02.09.1962. While so, the respondents have issued a show cause notice dated 11.11.2016 informing the petitioner that his date of birth has been fixed as 01-07-1961 as per Regulation No.19(2)(b) of TSRTC Employees (Service) Regulations, 1964 (for short 'the Regulations) and the petitioner was asked to submit his explanation. The petitioner contends that owing to ill health, he could not submit his explanation within the stipulated time and the respondents have unilaterally altered the date of birth of the petitioner as 01.07.1961, vide notification dated 19.12.2016, and basing on the altered date of birth, the respondents have issued a consequential notice on 01.01.2019 to the effect that the petitioner has to retire from service on attaining the age of superannuation on 30.06.2019.

Learned counsel for the petitioner submits that the petitioner has rendered more than 29 years of service with the respondent-Corporation and at the fag end of his service, the respondents have taken steps to alter the date of birth of the petitioner vide proceedings dated 11.11.2016.

Learned counsel further contends that Regulation No.19(2)(b) of the Regulations reads as under:

“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 s 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.”

Since the petitioner is an illiterate person, the case of the petitioner was referred to the Medical Officer of the Corporation and the Medical Officer vide proceedings dated 02.09.1992 has declared the date of birth of the petitioner as 02.09.1962 and accordingly, basing upon the said assessment, the date of birth of the petitioner was entered in the Service Register as 02.09.1962. As far as the declaration given by the petitioner at the time of his initial appointment to the effect that he was aged 28 years as on 14.06.1989 is concerned, the petitioner being an illiterate, could not specify the exact age in years, months and days and has roughly assumed the age as 28 years. Since the petitioner could not properly furnish the proof of date of birth, the case of the petitioner was referred to the Medical Officer and the Medical Officer has rightly assessed the date of birth of the petitioner as 02.09.1962. If the respondents agree with the declaration made by the petitioner with regard to his age, there was no necessity for the respondent Corporation to refer the case of the petitioner to the Medical Officer. All these years, it was treated as correct date of birth and only at the fag end of service of the petitioner, the respondents are trying to alter

the date of birth of the petitioner in terms of Regulation No.19(2)(b) of the Regulations. Learned counsel further submits that Regulation No. 19(3) of the Regulations reads as under:

“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 an advantage otherwise inadmissible, 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.”*

A perusal of Regulation No.19(3) of the Regulations makes it clear that whenever an employee makes a false claim in respect of his date of birth in order to continue in service, the power is conferred on the Managing Director to alter the date of birth but in the instant case, there is no such allegation against the petitioner. Since the date of birth of the petitioner was assessed by the Medical Officer and as per the said assessment, the same was entered in the Service register, the question of invoking either Regulation No.19(2)(b) or 19(3) would not arise. Therefore, learned counsel for the petitioner contends that the impugned proceedings dated

11.11.2016 and the consequential proceedings dated 01.01.2019 are liable to be set aside and petitioner be allowed to continue in service till he attains the age of superannuation by treating the date of birth of the petitioner as 02.09.1962.

Learned Standing counsel appearing for the respondents had contended that the date of birth that is entered in the Service Register of the petitioner was 02.09.1962 and the Auditor, while verifying the records, has found that the date of birth of the petitioner was not properly entered in terms of Regulation No.19(2)(b) of the Regulations and accordingly the Managing Director has accorded permission to alter the date of birth of the petitioner in terms of Regulation No.19(3) of the Regulations and accordingly though a show cause notice was issued to the petitioner on 11.11.2016, the petitioner failed to submit his explanation, and therefore, the respondents are left with no other option, except to alter the date of birth of the petitioner from 02.09.1962 to 01.07.1961. He further submits that since the age declared by the petitioner at the time of initial appointment and age assessed by Medical Officer of the Corporation are different from each other, the respondents have rightly altered the date of birth of the petitioner from 02.09.1962 to 01.07.1961, as per Regulation No.19(2)(b) of the Regulations.

Learned Standing counsel further contended that the petitioner has not challenged Regulation Nos.19(2)(b) and

19(3) and in the absence of the same, no relief can be granted to the petitioner. The respondents have every right to correct the date of birth of the petitioner in terms of Regulation Nos. 19(2)(b) and 19(3) of the Regulations. Therefore, there are no merits in the writ petition and the same is liable to be dismissed.

This Court, having considered the rival submissions made by the learned counsel on either side, is of the considered view that when once the date of birth of the petitioner was assessed by the Medical Officer and entered in the Service Register as 02.09.1962, the question of altering the date of birth at the fag end of service of the petitioner by invoking Regulation Nos.19(2)(b) and 19(3) would not arise. Regulation No.19(3) of the Regulations, no doubt confers the power on the Managing Director of the Corporation to alter the date of birth of an employee, but it applies only in cases where the Managing Director is of the opinion that an employee has made a false claim to continue in service. In the instant case, no such attempt is made by the petitioner, since right from the beginning the date of birth of the petitioner was entered as 02.09.1962 in the Service Register. As far as the contention of the respondents that petitioner has not challenged the Regulation Nos.19(2)(b) and 19(3), this Court is of the view that the Regulations would not apply to the case of the petitioner, and the same would apply only in cases where a false claim is made by an employee in order to

continue in the service. From initial appointment of the petitioner in the Corporation, the date of birth of the petitioner was treated as 02.09.1962 that too based upon the assessment done by a Medical Officer of the respondent Corporation.

In view of the above observations, the writ petition is allowed and the impugned proceedings dated 19.12.2016 and the consequential proceedings dated 01.01.2019 are liable to be set aside and are accordingly set aside. The respondents are directed to continue the petitioner in service till he attains the age of superannuation by treating the date of birth of the petitioner as 02.09.1962. No costs.

As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

28.06.2019
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