

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.11573 of 2018

ORDER

This writ petition is filed seeking the following relief:

“to issue writ, order or direction, more particularly one in the nature of Writ of Mandamus directing the respondents to reckon the date of birth of the petitioner as 14.07.1961 as rectified by the competent authority in the X Class marks sheet as reconfirmed by Government of Telangana, Education Department *vide* its proceedings dated 12.06.2015; and grant such other relief or reliefs as Hon’ble Court deems fit and proper in the circumstances of the case.”

Heard Sri G.Siva, learned counsel appearing for the petitioner, learned Assistant Solicitor General appearing for respondent Nos.1 and 2 and Ms.Kiran Mayee, learned counsel, representing Sri K.G.Krishna Murthy, learned Senior Counsel appearing for respondent No.3.

It is the case of the petitioner that initially, he was appointed as an Officer in Indian Railways Traffic Service (IRTS), after undergoing regular selection process on 13.07.1987. His date of birth was wrongly entered as 04.05.1959 in the service register based upon the earlier school certificate. Thereafter, the petitioner has taken steps for correction of his date of birth in the SSC record and the competent authority has corrected his date of birth as

14.07.1961 in the SSC record *vide* order dated 30.11.1992, which was reconfirmed by the Director of School Education *vide* letter dated 12.06.2015. Meanwhile, the Ministry of Steel has invited applications for appointment to the post of Director, National Mineral Development Corporation (for short 'NMDC') *vide* notification dated 01.10.2013 from the eligible candidates, who are working in the Public Sector Undertakings, Central Government and other establishments. In pursuance thereof, the petitioner has submitted his application through proper channel i.e., Indian Railways. The Indian Railways has forwarded the application to the Ministry of Steel recommending the case of the petitioner for appointment to the post of Director (Commercial). Thereafter, the case of the petitioner was approved by the Appointments Committee of the Cabinet, which has recommended that the petitioner be appointed as a Director of NMDC for a period of five years from the date of his appointment or till the date of superannuation, whichever is earlier. In paragraph No.3 of the proceedings dated 09.10.2014, it was specifically stated that while approving the appointment, the Appointments Committee of the Cabinet has also directed to resolve the matter regarding the date of birth of the petitioner quickly and approve the

appointment. Thereafter, the petitioner was issued appointment order on 14.10.2014 and in terms of the said appointment order, he joined as Director (Commercial), NMDC, on 17.11.2014. Since his date of birth was not entered correctly in the service register of NMDC, he made lot of correspondence with the Indian Railways. When the said exercise proved futile, the petitioner has filed O.A.No.302 of 2016 before the Central Administrative Tribunal by impleading the Indian Railways, and sought a direction to correct his date of birth in the service register of Indian Railways from 04.05.1959 to 14.07.1961. But he did not implead the Ministry of Steel or NMDC in the said O.A. The said O.A was disposed of *vide* order dated 11.04.2016 directing the respondents to consider the representation of the petitioner and dispose of the same. Challenging the order of the Central Administrative Tribunal, the petitioner has filed W.P.No.1724 of 2017 before this Court seeking a direction to the respondents to correct his date of birth from 04.05.1959 to 14.07.1961 so as to enable him to continue his service in NMDC till he attains the age of superannuation, in accordance with law. The said Writ Petition was allowed on 01.02.2017 directing the Railways to act upon the corrected date of birth in the SSC record of the petitioner by making

consequential corrections in his service register and thereafter forward the same to the NMDC. Aggrieved by the said order, the Railway Board has carried the matter in appeal to the Apex Court *vide* SLP No.17167 of 2017. The Apex Court allowed the same *vide* order dated 13.10.2017. Since the petitioner had attained the age of superannuation as per the date of birth entered by the Railways i.e., 04.05.1959, the NMDC has relieved the petitioner from duty on 31.05.2019. Even before relieving, the petitioner has filed the present writ petition seeking a direction to the respondents to continue him as Director (Commercial) upto the end of October, 2019 based upon the rectified date of birth i.e., 14.07.1961.

This Court *vide* order dated 01.05.2019 directed the respondents to continue the petitioner in service until further orders.

Learned counsel appearing for the petitioner submits that in the application form, the petitioner has categorically stated that his date of birth is 14.07.1961 and he has also enclosed a copy of the corrected date of birth in the SSC record, but the respondents instead of acting upon the said date of birth had endlessly corresponded with the Railways. When the petitioner was absorbed as Director (Commercial)

of NMDC, the relationship of employer and employee between him and the Railways has come to an end and the date of birth of the petitioner has to be taken into consideration as 14.07.1961 and that the petitioner be continued in service till he attains the age of superannuation or completion of five years of service, whichever is earlier. Learned counsel further submits that since five years of service has to be taken from the date of assumption of the charge, he should be allowed to perform duty till October, 2019. Learned counsel prays that appropriate direction be given to the respondents to continue the petitioner as Director (Commercial), NMDC, till he completes five years of service without reference to the incorrect date of birth entered in the service register of Railways i.e., 04.05.1959.

Learned Assistant Solicitor General appearing for respondents 1 and 2 contends that the application form of the petitioner for the post of Director (Commercial), NMDC, was submitted through proper channel i.e., Railways. It is further contended that though the petitioner has entered his date of birth in the SSC record as 04.05.1959, no effort was made by him to correct the same when he was in the Railways and it is only after getting appointed as Director (Commercial), NMDC, an attempt was made by the

petitioner for correction of his date of birth so as to enable him to continue till he attains the age of superannuation or completes five years of service, whichever is earlier. It is further contended that in view of the order passed in the SLP, the petitioner cannot turn around and file the present writ petition seeking the very same relief. The petitioner was already relieved from the post of the Director on 31st May, 2019. Since the petitioner has not impleaded NMDC against whom he is seeking the relief, and in view of the said lacuna, the writ petition is liable to be dismissed.

Learned counsel appearing for the 3rd respondent reiterated the very same arguments advanced by the learned Assistant Solicitor General.

Having considered the rival submissions made by the learned counsel on either side, this Court is of the view that the petitioner has earlier made an attempt in 2016 by filing OA and the said litigation was carried upto Apex Court and the Apex Court allowed the SLP preferred by the Railways, which went against the petitioner. In view of the order passed by the Apex Court, the petitioner cannot file the present writ petition seeking the very same relief and the writ petition is liable to be dismissed.

Accordingly, the Writ Petition is dismissed. No costs.

Miscellaneous petitions, pending, if any, shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

7th August, 2019

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