

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.13354 of 2015

ORDER:

This writ petition is filed seeking a Writ of Mandamus declaring the proceedings dated 24.07.2014 and 09.04.2015 as arbitrary and illegal and consequently quash and set aside the same with a direction to the respondents to record the date of birth of the petitioner as 15.04.1958 instead of 11.05.1955 in his service records.

2. Heard Sri T.Koteswara Rao, counsel for petitioner and Sri J.Srinivasa Rao, Standing Counsel for Singareni Collieries Company Ltd.

3. It has been contended by the petitioner that he was initially appointed as Badili Worker during 1979 and at the time of his appointment, the petitioner had produced the transfer certificate to demonstrate his date of birth as 15.04.1958. Accordingly, the date of birth of petitioner was entered in the records as 15.04.1958. However, while the petitioner was discharging his duties, the respondents have raised dispute about the correctness of the date of birth of the petitioner and his case was referred to the age determination committee. The age determination committee, after examining the entire record, had recommended the case of petitioner to the Corporate for final decision, vide proceedings dated 27.03.2013. However, without referring to the Corporate for final decision, respondents have taken a unilateral decision to retire the petitioner from service. Challenging the same, the present writ petition is filed.

4. Counsel for petitioner contended that this Court was pleased to grant interim directions on 30.04.2015 to the following effect :

“The petitioner may not be retired on 31st May 2015 on the ground that he has attained the age of superannuation of 60 years, so reckoned from 1955, in view of the alteration of the date of birth of the petitioner in his Service Record from 1958 to 1955 without putting him on notice.”

By virtue of the said interlocutory order, the petitioner was allowed to continue in service upto his actual age of retirement i.e. 30.04.2018. Therefore, counsel for petitioner contends that now that the petitioner has been allowed to continue upto the age of 60 years, the only issue remains is to direct the respondents to release the pension and other retiral benefits of the petitioner in accordance with law.

5. Counsel for petitioner has contended that though liberty was given by this Court in the interlocutory order to give opportunity to the petitioner and then take appropriate action, the respondents have not issued any notice nor taken any action to retire the petitioner after putting him on notice. Therefore, appropriate orders be passed directing the respondents to settle all the terminal benefits of the petitioner by treating the petitioner's date of birth as 15.04.1958 with all consequential benefits.

6. The Standing Counsel appearing for respondents has contended that the respondents have filed vacate stay petition, but as the said vacate stay petition could not be adjudicated, the petitioner was allowed to

continue in service and that the actual date of birth of petitioner was 1955 as per the Medical Board's report at the time of initial appointment of petitioner. Therefore, petitioner is not entitled for all terminal benefits beyond the actual date of retirement. Therefore, there are no merits in the writ petition and the same is liable to be dismissed.

7. This Court, having considered the rival submissions made by the parties, is of the considered view that the petitioner was allowed to continue in service upto the age of 60 years i.e. upto 30.04.2018 as this Court granted interim directions directing the respondents to continue the petitioner in service, however, liberty was given to the respondents to put the petitioner on notice and take appropriate action, but so far, no notice was issued to the petitioner for correcting his date of birth. Therefore, the only issue that remains is payment of retiral benefits. Therefore, this Court is of the view that as the petitioner is allowed to be in service upto the age of 60 years taking his date of birth as 15.04.1958 in terms of the interim orders of this Court, as the age determination committee has not determined the age of the petitioner, but it has recommended to refer the case to the Corporate for final decision and as the respondents have not referred the case of petitioner to the Corporate for final decision, this Court is of the view that the respondents have not taken steps to conclusively come to the conclusion with regard to the correct date of birth of the petitioner.

8. In view of the above, the writ petition is allowed and the respondents are directed to release all the retiral and terminal benefits in

favour of the petitioner within a period of Eight weeks from the date of receipt of a copy of this order. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

15th November, 2019

ajr

