

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION NO.19645 OF 2018

ORDER:

This writ petition is filed seeking a Writ of Mandamus declaring the letter, dated 19.09.2017, issued by the respondents, whereby the petitioner was required to retire from service with effect from 01.10.2018, as unreasonable, arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India and quash or set aside the same and further direct the respondents not to alter the date of birth of the petitioner which was originally recorded in his service records as 18.05.1961 and continue the petitioner in service until he reaches superannuation in the normal course.

Heard Sri Vishwanath Manoj, counsel for the petitioner, and Sri J. Sreenivasa Rao, Standing Counsel appearing for the respondents.

It has been contended by the petitioner that he was initially appointed as General Mazdoor with the respondents on 10.04.1984. Since he has passed only Class VII and there were no other educational qualifications possessed by the petitioner at the time of his appointment, he was subjected to Medical Examination for determination of his age and the competent Medical Board of the respondents has assessed the age of the petitioner as 25 years as on 27.09.1983 and based upon the medical report, the date of birth of the petitioner was entered as 18.05.1961 in the service records and, since

then, he has been discharging his duties to the best satisfaction of his superiors and everyone concerned.

The petitioner further submitted that while he was discharging his duties as Driver during 2017, the respondents have issued notice of retirement on 19.09.2017 stating that as per the company records, the petitioner would be completing 60 years as on 26.09.2018 and he would be retiring from service with effect from 01.10.2018. Challenging the same, the present writ petition is filed.

Counsel for the petitioner contended that all through, the date of birth of the petitioner was entered as 18.05.1961 in his service records however, at the fag end of his career, the respondents have unilaterally corrected the date of birth of the petitioner from 18.05.1961 to that of 27.09.1958 and before correcting the date of birth of the petitioner, no notice was given to the petitioner. Counsel for the petitioner has further contended that in all the official records of the petitioner i.e., the Nomination Form of Coal Mines Provident Fund, Form-B register etc., the date of birth of the petitioner was correctly entered as 18.05.1961, but the respondents have corrected the said date of birth to that of 27.09.1958. Therefore, counsel for the petitioner contended that the action of the respondents in correcting the date of birth of the petitioner from 18.05.1961 to that of 27.09.1958 and retiring the petitioner in pursuance of the retirement notice dated 19.09.2017 based upon the corrected date of birth, is an arbitrary exercise and appropriate orders be passed in the writ petition by setting aside the retirement notice dated 19.09.2017 and further direct the respondents

to continue the petitioner in service till he attains the age of superannuation as per the correct date of birth i.e., 18.05.1961, with all consequential benefits.

Standing Counsel appearing for the respondents had contended that since the petitioner had not produced any proof in respect of his date of birth, the petitioner was subjected to medical examination and based upon the medical report, which clearly stated that the petitioner appears to be 25 years of age as on 27.09.1983, the date of birth of the petitioner was corrected from 18.05.1961 to that of 27.09.1958. Standing Counsel further contended that since there is a dispute with regard to the date of birth of the petitioner, as per the Rules the case of the petitioner would be referred to the Age Determination Committee and based upon the Committee's recommendations, appropriate action would be initiated in the instant case.

Standing Counsel had relied upon the judgment rendered by the Hon'ble Supreme Court in **State of Tamil Nadu v. T.V. Venugopalan**¹, wherein the Supreme Court has categorically held that the claim of the employees, who approach the Court at the fag end of their career, seeking correction of their date of birth, shall not be entertained, and contended that the petitioner has approached this Court at the fag end of his service seeking correction of his date of birth, therefore, there are no merits in the writ petition and the writ petition is liable to be dismissed.

¹ (1994) 6 SCC 302

Having considered the submissions of learned counsel on either side, this Court is of the considered view that all through, the date of birth of the petitioner was recorded as 18.05.1961 in his service records. Even the records of the petitioner i.e., Form-B register, Nomination Form of Coal Mines Provident Fund, Family Particulars Form of Coal Mines Family Pension Scheme, originally, disclose the date of birth of the petitioner as 18.05.1961. Only at the fag end of the career of the petitioner, the respondents have altered the date of birth of the petitioner from 18.05.1961 to that of 27.09.1958, that too without giving any notice and without giving any opportunity to the petitioner. When an employee cannot seek correction of his date of birth at the fag end of his career, even the same principle applies to the respondents i.e., the respondents also cannot correct the date of birth of the petitioner at the fag end of the petitioner's service, that too unilaterally without giving any notice and without giving any opportunity to the petitioner. Thus, this Court is of the considered view that the respondents have corrected the date of birth of the petitioner at the fag end of his career, that too without giving any notice to the petitioner. Therefore, the impugned notice issued on 19.09.2017, informing the petitioner that he would be retiring from service with effect from 01.10.2018, is liable to be set aside.

Accordingly, the writ petition is allowed and the impugned notice dated 19.09.2017 is set aside. The action of the respondents in retiring the petitioner based upon the altered date of birth is also held to be bad. The respondents are directed to re-induct the petitioner into

service by considering the date of birth of the petitioner as 18.05.1961 for all purposes and continue the petitioner in service with all consequential benefits. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

17th October, 2019
v v

