

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.36544 of 2018

ORDER:

This writ petition is filed seeking a Writ of Mandamus, declaring the letter dated 03.05.2018 issued by the 3rd respondent, whereby, the petitioner is required to retire from service of the respondent-Company with effect from 31.03.2019, as unreasonable, manifestly arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India and quash and set aside the same with a consequential direction directing the respondents to continue the petitioner in service by reckoning his date of birth as 10.05.1964 as was recorded in his Service Book with the approval of the Superintendent of Mines.

2. Heard Sri T.Koteswara Rao, counsel for petitioner and Sri J.Sreenivasa Rao, Standing Counsel for respondents.

3. It has been contended by the petitioner that he was initially appointed as Badili Filler in the respondent-Company on 21.05.1983 and the Service Register of the petitioner was prepared and his age was recorded as 24 years as on 27.03.1983 and his date of birth was recorded as 27.03.1959. Petitioner further submitted that his date of birth was entered as 10.05.1964 in the SSC record, but the respondents have retired him based upon incorrect date of birth i.e. 27.03.1959 instead of 10.05.1964. Therefore, the petitioner has filed this writ petition challenging the proceedings dated 03.05.2018,

whereby, the petitioner was to retire from service as per the incorrect date of birth entered in the Service Register. Petitioner submits that as per the SSC record, his date of birth is 10.05.1964, therefore, in all fairness, the respondents ought to have retired the petitioner as per the date of birth as entered in his SSC certificate.

4. The petitioner further submits that he was initially appointed as Badili Filler on 21.05.1983 and later on promoted as Coal Cutter, Shot Firer, Mining Sirdar and finally as Head Overman. He contends that his date of birth was changed as 10.05.1964 as per the SSC Certificate in accordance with the Circular dated 01.08.1985 with the approval of Superintendent of Mines. When once the date of birth was corrected wayback in 1985, the action of respondents in retiring the petitioner based upon the incorrect date of birth is arbitrary and illegal and the same is liable to be set aside and the petitioner shall be continued in service till he attains the age of superannuation as per the correct date of birth.

5. The learned Standing Counsel has submitted that at the time of his initial appointment on 21.05.1983, the petitioner had not produced any certificates in respect of his date of birth. The petitioner has appeared for SSC examination in October, 1987 i.e. after his appointment, therefore, the date of birth of the petitioner entered in the SSC Certificate cannot be taken into consideration. Since the petitioner had not produced any documents in respect of his date of birth at the time of his initial appointment, he was subjected to

medical examination and the Medical Officer had assessed the age of the petitioner as 24 years as on 27.03.1983, and based upon the said assessment, the date of birth of the petitioner was determined as 27.03.1959.

6. Having heard learned counsel for the parties, this Court is of the considered view that the date of birth of petitioner as per service register is 27.03.1959 and petitioner has approached this Court at the fag-end of his career seeking correction of the same. As regards the claim of the petitioner that his date of birth was altered in the service register from 27.03.1959 to 10.05.1964 by the Superintendent of Mines is concerned, the same was examined by the respondents and the applications submitted by the petitioner on 17.11.2017 and on 28.01.2018 were rejected by the respondents vide orders dated 28.11.2017 and 19.02.2018 respectively and the petitioner was accordingly informed about rejection of his request for change of date of birth, but the petitioner has not chosen to challenge the said rejection orders and he has filed the writ petition in October 2018 knowing fully well that he would be retiring from service by 31.03.2019.

7. The learned counsel for petitioner has relied upon the judgment of the Hon'ble Supreme Court in **H.L.Trehan & others v. Union of India & others**¹, wherein, it is held that the Statute empowers the Government or its instrumentality to 'duly' alter remuneration and

¹ (1989) 1 SCC 764

conditions of service of its employees after giving reasonable opportunity and after extending principles of natural justice. But, in the instant case, the case of the petitioner was considered and rejected by the respondents vide orders dated 28.11.2017 and 09.02.2018 and the petitioner did not choose to challenge the said rejection orders. In view of the same, the judgment relied upon by the petitioner will not be of much help to him. Therefore, this Court is not inclined to interfere in the matter.

8. The writ petition is devoid of merit and the same is accordingly dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

11th June, 2019

ajr