

**THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI
AND
THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**

W.P.No.10657 of 2012 and W.P.No.21063 of 2019

COMMON ORDER:

These writ petitions are being disposed of by way of a common order as these two writ petitions i.e., W.P.No.10657 of 2012 and W.P.No.21063 of 2019 are arising out of same issue.

2. Aggrieved by the orders passed by the Administrative Tribunal, Hyderabad, in Review M.A. No. 1056 of 2011 in O.A. No. 8382 of 2010 dated 29.08.2011, W.P.No.10657 of 2016 is filed.

3. W.P.No.21063 of 2019 is filed by the respondent No.1 in W.P. No. 10657 of 2012 wherein, the employee has filed the present writ petition seeking this Court to release retirement benefits.

4. Heard learned Government Pleader for the petitioners and Sri. Phani Bhushan, Senior Counsel, appearing for P. Ramulu, learned counsel for the respondents.

5. For the sake of convenience, the facts in W.P.No.10657 of 2012 are hereunder discussed.

6. It has been contended by the petitioners that respondent No.1 was appointed as Police Constable in the year 1976 and the date of birth of respondent No.1 was entered as 04.08.1953. After rendering a considerable length of service, respondent No.1 has submitted an application seeking correction of his date of birth as 04.08.1957 instead of 04.08.1953 in the year 2005 and the petitioners have considered the same and rejected *vide* Memo.No.11964/Ser.II/A1/2006-1, dated 01.06.2006.

7. Aggrieved by the same, respondent No.1 filed O.A.No.8382 of 2010 before the Administrative Tribunal, Hyderabad and the Tribunal was pleased to dismiss the O.A. *vide* orders dated 20.04.2011 with a specific finding that if 04.08.1957 is to be taken into account at that point of time, respondent No.1 would be a minor and the correction of date of birth is not permissible at the fag end of his career.

8. Thereafter, respondent No.1 has filed the Review M.A.No.1056 of 2011 seeking the Tribunal to review and set aside the order dated 20.04.2011 passed in O.A.No.8382 of 2010 by contending that as per the school records maintained by the Government High School, Chenchalguda, the date of birth of respondent No.1 was printed erroneously as 04.08.1953 instead of 04.08.1957. The Tribunal has

allowed the review M.A.No.1056 of 2011 contrary to the earlier findings and directed the date of birth of respondent No.1 be corrected from 04.08.1953 to 04.08.1957 without appreciating any of the contention raised by the petitioners. Therefore, appropriate order be passed in the writ petition by setting aside the order passed by the Tribunal in review M.A. No. 1056 of 2011 in O.A. No. 8382 of 2010, dated 29.08.2011.

9. Learned counsel appearing for the 1st respondent has contended that as per the school records maintained by Government High School, Chenchalguda, the Tribunal was justified in allowing the review M.A. No. 1056 of 2011 and Tribunal has called for records from the Government High School, Chenchalguda and after verifying the same, the Tribunal has rightly allowed the review M.A. No. 1056 of 2011 in favour of the respondents. Learned counsel for the respondents has further contended that there was a clerical mistake while entering date of birth of respondent No.1 in the service record and the Tribunal was justified in directing the petitioners to correct the clerical mistake. Therefore, there are no merits. The writ petition is liable to be dismissed.

10. This Court, having considered the rival submissions made by the parties, is of the considered view that admittedly respondent No.1 was appointed as Police Constable on 21.05.1976 and the Government High School, Chenchalguda, has issued a Transfer Certificate (T.C.) to respondent No.1 on 12.11.1974 and that respondent No.1 was in the possession of T.C. from 1974 i.e., even before he was appointed as Police Constable, no steps were taken by respondent No.1 to correct the date of birth and the application was filed by respondent No.1 to the petitioners nearly after (30) years i.e, only in 2005. In the application submitted by respondent No.1 to the petitioners seeking for correction of date of birth, he could not point out how the clerical mistake has come up in his school records and that how he has produced the same at the time of his entry into the service. The Hon'ble Supreme Court in **Bharath Cooking Coal Limited Vs. Shyam Kishore Singh** ¹ has held that the correction of date of birth cannot be entertained at the fag end of a career of the employee. The Tribunal was not justified in complying the said judgment of the Hon'ble Supreme Court referred to supra and therefore, the 1st respondent could not have sought correction of his date of birth. More so, G.O.Ms.No.165 dated 21.04.1984 was issued under Article 309 of the

¹ Civil Appeal No. 1009 of 2020

Constitution of India making it clear that no correction of date of birth can be entertained when once it was entered in the service records except for clerical errors.

11. Admittedly, the 1st respondent could not demonstrate the clerical error that is to be corrected in the service records while entering the date of birth of respondent No.1 except relying on school records and the said Transfer Certificate which was in possession of respondent No.1 from 1974 till 2005 and since 30 years, respondent No.1 has not taken any steps to see that his date of birth is corrected in the service record. Admittedly, after nearly (30) years of service, respondent No.1 has taken his claim for correction of date of birth. Therefore, the Tribunal was not justified in allowing the review M.A. No. 1056 of 2011 in O.A. No. 8382 of 2010, dated 29.08.2011.

12. Therefore, orders passed by the Tribunal in review M.A. No. 1056 of 2011 in O.A. No. 8382 of 2010, dated 29.08.2011 are liable to be set aside and W.P.No.10657 of 2012 is allowed.

13. With regard to W.P.No.21063 of 2019 is concerned, admittedly respondent No.1 was retired from service on 31.08.2011 and because of the pendency of W.P.No. 10657 of 2012, the petitioners have not released the retirement benefits in favour of respondent No.1.

14. Learned counsel for respondent No.1 has contended that more than 10 years back, respondent No.1 was retired from service and just because of the pendency of the W.P.No.10657 of 2012 filed by the petitioners, the retirement benefits of respondent No.1 have not been released. Now, since Writ Petition No. 10657 of 2012 is allowed, let there be a direction to the petitioners to release the retirement benefits of respondent No.1 with interest because for no fault of respondent No.1, his retirement benefits were delayed.

15. Learned counsel for respondent No.1 relied upon a decision rendered by the Hon'ble Supreme Court in **Vijay L. Mehrotra Vs. State of Uttar Pradesh²**, wherein the Hon'ble Supreme Court has held that an employee is entitled for interest for delayed payment of retirement benefits. Therefore, appropriate orders may be passed in W.P.No.21063 of 2019 directing the petitioners to release the retirement benefits along with reasonable interest.

16. Learned counsel appearing for petitioners submits that respondent No.1 has not submitted the retirement papers to the petitioners, even though he was retired on 31.08.2011. Therefore, the delay cannot be attributable to respondent No.1. The petitioners would

2001 (9) SCC 687²

have released the retirement benefits of respondent No.1 as per the entries made in the service register. Therefore, there are no merits. The writ petition is liable to be dismissed.

17. This Court, having considered the rival submissions made by the parties, is of the considered view that the petitioners were not justified in settling the retirement benefits in favour of respondent No.1. As admittedly, respondent No.1 has retired from service on 31.08.2011. Therefore, by following the law laid down by the Hon'ble Apex Court in **Vijay L. Mehrotra's case** (Supra 2), respondent No.1 is entitled for interest for the delayed retirement benefits @ 6%.

18. With these observations, both the Writ Petitions are allowed. There shall be no order as to costs.

As a sequel, miscellaneous applications pending if any in these Writ Petitions, shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

JUSTICE NAMAVARAPU RAJESHWAR RAO

Date : 17.10.2022
Prat/ss

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