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W.P.No.18843 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>26.10.2022</i>
<i>Pronounced on</i>	<i>02.01.2023</i>

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.18843 of 2015
and M.P.No.1 of 2015

Sagunthala

... Petitioner

Vs.

1.Tamil Nadu Minerals Ltd.,
Rep. by its Managing Director,
Tamil Nadu Water Supply Board Buildings Compound,
Kamarajar Salai, Chepauk, Chennai – 5.

2.The Manager,
Divisional Office,
Tamil Nadu Minerals Ltd.,
P.N. Patty, Nehru Nagar,
Mettur Railway Station Post,
Salem District – 636 402.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to restore the petitioner's original age of 21 years as on the date of the petitioner's initial appointment in her service register and other official records including the P.F. records and to allow the petitioner to continue in service till she attain the age of superannuation of 58 years on 01.08.2021



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with all consequential benefits.

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For Petitioner : Mr.V. Ajoy Khose

For Respondents : M/s.A. Srijayanthi [R1]
No Appearance - R2

ORDER

The petitioner herein was initially appointed as an unskilled labour on 02.08.1984 under the Quarry run by the respondents herein. At the time of appointment, the details of the petitioner were recorded in Form B Register No.173, wherein, her age was referred to as 18 years.

2. It is the case of the petitioner that the respondents herein had unilaterally altered her age as 34 years in the year 1991, which alteration was not known to the petitioner. Based on the altered date of birth, she was superannuated on 30.06.2015. According to the petitioner, her original date of birth was 18 years as on 02.08.1984 and therefore, the respondents have prematurely superannuated her and hence, seeks for a direction to restore her original date of birth and consequently, permit the petitioner to continue in service, based on her age mentioned in Form-B at the time of her initial appointment.



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3. Learned counsel for the petitioner placed reliance on Standing Order No.6 which provides that in case of labourers, who have failed to produce any testimonial to substantiate the date of birth, the respondents are required to send them to the District Medical Officer for medical opinion for the purpose of ascertaining the date of birth and accordingly, the petitioner had been subjected to medical examination and age in Form B has been determined as 18 years. Hence, the subsequent unilateral alteration of age as 34 years in the year 1991 cannot be sustained.

4. Per contra, learned counsel for the first respondent submitted that the Form B register maintained at her initial appointment is not a conclusive proof of age of the petitioner. Even otherwise, the petitioner herein should seek for alteration of date of birth only within three years from the date of her initial appointment and therefore, now the claim for alteration of age mentioned in Form B cannot be sustained. The learned counsel also placed reliance on Form O, in which, the petitioner's date of birth has been mentioned as 01.07.1957 as per the medical examination conducted on 29.07.1991 where she had also countersigned the Form by accepting such a date and therefore, cannot now seek for alteration.



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5. I have given careful consideration to the submissions made by the respective counsels.

6. It is the claim of the petitioner that her parents are illiterate who hail from a remote village and thus had not recorded her date of birth.

7. Under Rule 77 of the Mines Rules, 1955, the respondents are required to maintain a register under Section 48(1) of the Mines Act, 1952 in Form B. Rule 77A provides for issuance of identity tokens to every person who are employed in a mine, which has to be mandatorily carried along with them during the course of their employment.

8. Thus, when the petitioner herein was engaged as an unskilled worker on 02.08.1984, an identity card was issued on the same day evidencing her age as on 02.08.1984. The attested copy of the original Form B register pertaining to the petitioner, was called upon to be produced before this Court and on perusal of the same, it is seen that, as on 02.08.1984, the petitioner's age has been registered as 18 years.



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9. It is the case of the petitioner that in the year 1991, the respondents have unilaterally altered her age as 34 years, without any notice to the petitioner. According to the petitioner, her age which was originally registered in Form B as 18 years on 02.08.1984, is the correct age.

10. The learned counsel for the first respondent had produced a copy of Form O dated 29.07.1991, which is a report of the medical examination under Rule 29B, which certifies that the petitioner appears to be 34 years of age. Apparently, this age has been incorporated in the subsequent Form B register, which was prepared on 19.02.2013.

11. To the ground raised by the petitioner that the petitioner's age was registered as 18 years at the time of her first appointment on 02.08.1984, there is no answer in the counter-affidavit. Rather, the counter-affidavit proceeds on the footing that as per the report of the medical examination in Form O, the Chairman of the Medical Board/Joint Director of Medical Services, has certified the petitioner's age at 34 years



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as on 29.07.1991 and accordingly, her date of birth was mentioned as 01.07.1957, which is the normal practice in the cases of non-availability of documentary records.

12. In the counter-affidavit, it is also stated that it is a general practice in the cases of non-availability of birth certificate to register the date of birth as 1st January, in cases where certificate is issued between January to June and 1st July as for the certificates issued between July to December. Thus, the respondents have admitted that they had later changed the petitioner's date of birth in Form B, in accordance with the medical report.

13. The Certified Standing Orders of the Tamil Nadu Minerals Limited, Chennai, provides for solutions to situations when a workman is unable to furnish his exact date of birth through an acceptable document. Clause 6 (b)(iv) of the Certified Standing Orders reads as follows:

“6(b)(iv) In the event of a workman being unable to furnish his exact date of birth through an authentic document acceptable to the Management his age shall be determined by the Company Medical Officer or the District Medical Officer of the State



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Government and his date of birth fixed as the first of July of relevant year. The age of an employee as recorded with the Management at the time of his employment and duly authenticated by him shall not be sought to be altered by the employee under any circumstances.”

14. Thus, when the Certified Standing Orders itself provides that in the absence of the any supporting document for the date of birth, for a workman at the time of his appointment, they are required to subject such workman to the District Medical Officer for determining the workman's date of birth. The Certified Standing Orders further provides that the age of the workman recorded by the Management at the time of his employment and duly authenticated by them, shall not be sought to be altered by the workman under any circumstances.

15. Contrary to the Certified Standing Orders, it is seen that the original age determined in Form B as 18 years as on 02.08.1984, has been subsequently altered in the later Form B as 34 years as on 29.07.1991 and her date of birth was also determined as 01.07.1957.



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16. In view of the specific provision in the Certified Standing Orders, a presumption requires to be drawn to the effect that when the respondents had entered the petitioner's age as 18 years as on 02.08.1984, she must have been subjected to a medical examination before the concerned District Medical Officer of the respondent, in accordance with the Certified Standing Orders.

17. It is the case of the petitioner that the change of her age and date of birth in the subsequent Form B into 34 years as on 29.07.1991, was unilaterally altered without any notice to the petitioner herein.

18. The learned counsel for the first respondent further submitted that in case any alteration of date of birth in the service record is required, an application has to be made within five years of such entry into service and therefore, the petitioner's request altering the date of birth at this point of time, is not feasible.

19. This is not a case where the petitioner had given wrong date of birth in the service records and now seeks for altering the same. Rather, it



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is evident from the original Form B issued on 02.08.1984 and the subsequent Form B issued on 19.02.2013, that her age has been altered by the respondents without any notice to the petitioner. In consequence of this alteration, she was prematurely superannuated on 30.06.2015. Since this alteration was not done at the instance of the petitioner but rather by the respondents themselves, without notice to the petitioner, the stand taken by the learned counsel for the respondents that an application for alteration of date of birth has to be made within 5 years, cannot be sustained.

20. On an overall consideration of the circumstances under which, the petitioner's date of birth was altered by the respondents and was prematurely superannuated, this Court is of the view that her age requires to be determined as 18 years as on 02.08.1984 as per the original Form B registered at the time of her appointment and thereby, determine her date of birth as 01.07.1966, which is in accordance with the regular practice adopted by the respondents in considering the age based on the medical certificate issued between July to December of that year. Since the entire exercise adopted by the respondents in unilaterally altering the petitioner's



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date of birth and prematurely retiring her from service is illegal, the petitioner would be entitled for all the service and monetary benefits, together with her reinstatement.

21. Accordingly, there shall be a direction to the respondents to forthwith reinstate the petitioner back into service, together with continuity of service and other attendant benefits. Such orders shall be passed atleast within a period of four (4) weeks from the date of receipt of a copy of this order.

22. With the above directions, this Writ Petition stands allowed.
No costs. Connected miscellaneous petition is closed.

02.01.2023

Speaking/Non-speaking Order

Index : Yes/No

Internet : Yes/No

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To
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- 1.Managing Director,
Tamil Nadu Minerals Ltd.,
Tamil Nadu Water Supply Board Buildings Compound,
Kamarajar Salai, Chepauk, Chennai – 5.
- 2.The Manager,
Divisional Office,
Tamil Nadu Minerals Ltd.,
P.N. Patty, Nehru Nagar,
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M.S.RAMESH,J.

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Pre-delivery Order in
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