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W.P.No.26813 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2023

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.26813 of 2018

A. Rangaraj

... Petitioner

Vs.

1.The Director of Local Fund Audit,
Kuralagam, Chennai – 600 108.

1.The Commissioner,
Udakamandalam Municipality,
Nilgiris District, Nilgiris.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to treat the date of birth entered in page two of the service register viz., 18.07.1957 as correct date of birth of the petitioner and further treat him that he has attained the age of superannuation only on 31.07.2017 as Drain Cleaner at Udagamandalam Municipality with all consequential benefits such as arrears of pay etc.

For Petitioner : Mr.K.S. Viswanathan

For Respondents : Mr.K.H. Ravikumar
Government Advocate [R1]
Mr.P. Srinivas [R2]

ORDER



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A short issue involved in the present Writ Petition is as to whether the petitioner's date of birth was 18.07.1957, as claimed by him or 18.07.1955, as claimed by the respondents herein.

2. According to the learned counsel for the petitioner, the correct date of birth of the petitioner is 18.07.1957 and that the respondents had prematurely retired him from service on 31.07.2015.

3. In order to ascertain the correctness of the petitioner's date of birth, the respondents were called upon to produce the original Service Register, pertaining to the petitioner herein. On perusal of the original Service Register, it is seen that page 1 of the Service Register of the petitioner, originally states his date of birth to be as "18th July 1957, as per his School Certificate". The second page of the Service Register also evidences his date of birth as 18.07.1957. However, there is an unilateral declaration by the Municipal Health Officer, Udagamandalam, dated 26.06.1986, holding the petitioner's date of birth as 18.07.1955, as per the Panchayat Union Primary School records. A photocopy of school records



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is also affixed in the Service Register which is contrary to the claim made by the Medical Officer in the service records, but states that his date of birth is 18.07.1957.

4. It is not clear as to how the Medical Officer had come to such a conclusion that the petitioner's date of birth was 18.07.1955. Even otherwise, this Court is unable to appreciate as to how the Medical Officer can alter a date of birth of a Municipal Servant in the Service Register. All other entries in the Service Register seems to have been made by the Municipal Engineer and subsequently, the Commissioner. As such, the Medical Officer may not have the authority to make an endorsement in the Service Register for the purpose of altering the original date of birth.

5. This apart, there is nothing in the records produced before this Court to indicate that when the respondents have unilaterally changed the original date of birth from 18.07.1957 to 18.07.1955, the petitioner was put on notice, calling for his objection. In the absence of the same, such an alteration and the consequential premature retirement of the petitioner would be in violation of the principles of natural justice and on this ground



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also, the action of the respondents in retiring the petitioner on 31.07.2015 instead of 31.07.2017, cannot be sustained.

6. The consequence to such illegal alteration of date of birth would be that the period between 31.07.2015 to 31.07.2017, requires to be construed as compulsory wait period.

7. The learned standing counsel for the second respondent submitted that since the petitioner herein had not physically worked for the period between 31.07.2015 to 31.07.2017, he is not entitled for the arrears of pay on the principle of 'No work No pay'. I am not in agreement with such a finding.

8. As a matter of fact, this aspect has already been dealt with by the Hon'ble Supreme Court in the case '**Shobha Ram Raturi Vs. Haryana Vidyut Prasaran Nigam Limited**' reported in '**(2016) 16 SCC 663**', in the following manner:-

.... *“Having given our thoughtful consideration to the controversy, we are satisfied, that after the impugned order*



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of retirement dated 31.12.2002 was set aside, the appellant was entitled to all consequential benefits. The fault lies with the respondents in not having utilised the services of the appellant for the period from 1.1.2003 to 31.12.2005. Had the appellant been allowed to continue in service, he would have readily discharged his duties. Having restrained him from rendering his services with effect from 1.1.2003 to 31.12.2005, the respondent cannot be allowed to press the self serving plea of denying him wages for the period in question, on the plea of the principle of “no work no pay”....”

9. The aforesaid extract is self-explanatory. Since the alteration of the petitioner's date of birth in the Service Register is illegal and therefore, the premature retirement of the petitioner for no fault of his, would have to be necessarily treated as compulsory wait and by applying the ratio laid down by the Hon'ble Supreme Court in the aforesaid decision that, had the second respondent herein permitted the petitioner to continue the service, he would have discharged his duties and therefore, the principle of 'No work No pay' cannot be applied and therefore, this Court is of the view that the petitioner would be entitled for his last drawn pay from



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31.07.2015 to 31.07.2017.

10. At this juncture, the learned standing counsel for the second respondent submitted that the retirement and pensionary benefits were already disbursed to the petitioner from 31.05.2015 and that he has been receiving the monthly pension from 31.07.2015 till date. If that be so, the respondent shall be entitled to deduct the pension amount from out of the arrears of salary payable to the petitioner for the aforesaid period between 31.07.2015 to 31.07.2017.

11. In the light of the findings and observations, there shall be a direction to the respondents herein, to forthwith pass orders, by treating the petitioner's date of birth in his Service Register as 18.07.1957 and that he was made to compulsorily wait from 31.07.2015 to 31.07.2017 and thereby, disburse his last drawn wages for the aforesaid period between 31.07.2015 to 31.07.2017. Such order of disbursement of the arrears shall be made atleast within a period of four (4) weeks from the date of receipt of a copy of this order. The respondents shall also pass orders by including the petitioner's service between 31.07.2015 to 31.07.2017 and



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thereby, revise the monthly pension payable to him.

12. With the aforesaid directions, this Writ Petition stands allowed.

No costs.

05.01.2023

Speaking/Non-speaking order

Neutral Citation: Yes/No

Index: Yes/No

Internet: Yes/No

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To

1.The Director of Local Fund Audit,
Kuralagam,
Chennai – 600 108.

1.The Commissioner,
Udakamandalam Municipality,
Nilgiris District,
Nilgiris.



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M.S.RAMESH,J.

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