



W.P.(MD) No.18825 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 24.07.2023

ORDERS PRONOUNCED ON : 07.08.2023

CORAM

THE HON'BLE MR.JUSTICE BATTU DEVANAND

W.P.(MD) No.18825 of 2016

and

W.M.P.(MD) Nos.13607 and 13608 of 2016

Kanniammal

... Petitioner

Vs.

- 1.The District Collector,
District Collectorate Office,
Dindigul.
- 2.PA (NMP) to the District Collector,
District Collectorate Office,
Dindigul District.
- 3.The Commissioner,
Panchayat Union Office,
Vedasandur, Dindigul District.
- 4.The Block Development Officer,
Panchayat Union Office,
Vedasandur, Dindigul District.



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5. The Head Master,
Panchayat Union Elementary School,
Rengagoundanpudur,
Vedasandur Taluk, Dindigul District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus, to call for the records pertaining to the proceedings of the 3rd respondent in Na.Ka.No. 1400/2014/Aa6 dated 09.12.2015 and quash the same and that consequently direct the respondents to reinstate the petitioner within a time to be stipulated by this Court back in service with immediate effect with all back wages that may have accrued from 01.07.2014 until the date of reinstatement of the petitioner.

For Petitioner	:	Mr.P.Vairava Sundaram
For RR1, 2 & 5	:	Mr.P.Subbaraj Special Government Pleader
For RR3 & 4	:	Mr.Aayiram K.Selvakumar

ORDER

This writ petition has been filed against the proceedings of the 3rd respondent in Na.Ka.No.1400/2014/Aa6, dated 09.12.2015 and for a consequential direction to reinstate the petitioner with all back wages that may have accrued from 01.07.2014 until the date of reinstatement.



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2. The case of the petitioner is that she was appointed as Cook Assistant in the 5th respondent-School on 22.08.1987. She is contributing to the Family Pension Fund from 01.11.1990. On 19th February, 1992, Service Register was opened for the petitioner and for all categories of posts like, Organiser, Cook and Cook Assistant. The petitioner had no proof of educational qualification and considered it at that juncture as IV Standard pass and her age was calculated and her date of birth was entered as 03.06.1957. The petitioner was promoted to the post of Cook on 30th June, 1995 and continued her services there. From 01.07.1998, the petitioner is contributing to the Special Provident Fund.

3. During the year 2006, with a view to regularise the services of the employees, Service Rules came to be framed and minimum education qualification, age limit and other eligibilities have been prescribed for all categories of posts in Noon Meal Scheme for all fresh recruits. Those who entered into service before 2006 in the absence of educational qualification certificate, were directed to appear for medical examination for the purpose



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of ascertaining the age. The petitioner is one among those who have entered into service prior to 2006 and who are working as Cook Assistant and Cook do not possess proof of educational qualification and that of proof of age and those persons, who entered into service between the period from 1983 to December, 2004, were directed to appear before the concerned Medical Officer for the purpose of ascertaining the age for their continuity of service. The petitioner was directed to appear before the Medical Officer, i.e., Joint Director of Health Services, Dindigul. In that medical examination, the petitioner was certified as 40 years of age both by appearance and by physical verification and Age Certificate was issued in that regard by the Joint Director of Health Services, Dindigul on 02.03.2006. In view of the Age Certificate issued by the Medical Officer on 02.03.2006, as on the day, the age of the petitioner is 40 years and her date of birth has to be entered in the Service Register as 01.07.1966. In view of the medical certificate being considered as age proof certificate, the petitioner is eligible to work until 30th June, 2024, which would be the age of superannuation after completion of 58 years of age. But, the petitioner was prevented from continuing the service from 01.07.2014.



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4. The 5th respondent orally instructed the petitioner not to work stating that she attained the age of superannuation on 30th June, 2014 and she was retired from service. Aggrieved by the action of the 5th respondent, the petitioner submitted representations to the 3rd respondent on 28.07.2014, 18.08.2014, 22.09.2014 and 13.10.2014 requesting to permit her to continue in service based on the Age Certificate issued by the competent Medical Officer. No retirement order was served on the petitioner. Furthermore, after retirement on 30th June, 2016, the 5th respondent had obtained the signatures of the petitioner on a blank paper promising her that she will be allowed to continue to work and with bona fide belief and trusting the 5th respondent, the petitioner signed on the paper. But, on the contrary, she came to learn later that the blank paper had been filled by the 5th respondent as the petitioner voluntarily withdrew herself from continuing service.

5. After 1½ years, the 3rd respondent served a proceedings in Na.Ka.No.1400/2014/Aa6, dated 09.12.2015 declaring that the petitioner was superannuated as on 30th June, 2014. The reasons given in the said



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order are that the petitioner failed to furnish proof of the educational qualification and the entry in the Service Register as towards her date of birth is as 01.07.1956 and considering the same, they declared the petitioner as superannuated. The retirement order was issued by the 3rd respondent only after the petitioner sought the service particulars of the petitioner under Right to Information Act. Aggrieved by the action of the 3rd respondent, the present writ petition is filed.

6. On behalf of the respondents, a counter affidavit has been filed.

7. In the said counter, it is averred that as per the entries in the Service Register of the petitioner, her date of birth is 01.07.1956. As per Service Conditions of Cooks working in Noon Meal Scheme, no Cook can be in service after attaining the age of 58 years. The petitioner attained superannuation on 30th June, 2014 and the petitioner could not be allowed to continue in service after attaining the age of superannuation. The petitioner is making her claim for altering date of birth based on the District Medical Board's certificate, which was produced after completion of 19 years of



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service. In Rule 49(c) of the Tamil Nadu State and Subordinate Service Rules, it is crystal clear that any application for alteration of date of birth after completion of five years of service without the support of entries in the Secondary School Leaving Certificate, School, College and University records, birth extracts from the records of local bodies or military discharge certificate, should be summarily rejected. The Service Register of the petitioner was opened on 19.02.1992. All entries including date of birth were entered based on the school record produced by the petitioner. The District Medical Board's certificate of the petitioner is not fall under any one of the above documents mentioned in Rule 49(c) and Rule 49A(2) of the Tamil Nadu State and Subordinate Service.

8. At Paragraph No.24 of the counter affidavit, it is stated that as per the identity card issued by the Election Commission to the petitioner, her year of birth is mentioned as 1959, in the family card, it is mentioned as 1957, in the Service Register, it is mentioned as 1956 and in the certificate issued by the District Medical Board, it is mentioned as 1966. As such, on finding discrepancy in the date of birth as entered in the Service Register of



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the petitioner, the 3rd respondent considered the date of birth mentioned in the Service Register and issued the impugned proceedings to retire the petitioner from service after completion of 58 years.

9. Heard the learned counsel for the petitioner, learned Special Government Pleader appearing for respondents 1, 2 and 5 and the learned counsel appearing for respondents 3 and 4 and perused the record.

10. Learned counsel for the petitioner contends that in the year 2006, 21 Cooks including the petitioner and 18 Cook Assistants, who do not possess neither educational qualification certificate, nor a birth certificate for proof of age, had undergone medical examination for age proof and basing on the examination by the Medical Board, the Joint Director of Health Services, Dindigul, the petitioner was issued with a certificate stating that she is aged 40 years. That age certificate has to be taken for all purposes. The date of birth of the petitioner which stood in the Service Register at the time of opening of it, wherein it was entered as 03.07.1957 and in view of the Age Certificate issued by the competent Medical Officer,



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the age in the register ought to have been corrected as 01.07.1966. But, it was mistakenly entered as 01.07.1956. The petitioner came to know about this fact only after obtaining the information under the Right to Information Act. If the petitioner's age is considered as per the certificate issued by the Medical Board in the year 2006, the petitioner will attain the age of superannuation only in the year 2024. But the respondents issued the impugned proceedings erroneously recording that the petitioner has attained the age of superannuation in the year 2014, which is illegal and unjust.

11. Learned counsel further submits that all other employees, who had undergone medical examination in the year 2006, are continued in service basing on the Age Certificate issued by the competent Medical Officer. But, only in the case of the petitioner, she was declared as superannuated, despite the medical examination and issuance of Age Certificate, which is totally discriminatory and violation of Articles 14 and 21 of the Constitution and sought to allow the writ petition.



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12. On the other hand, the learned counsels appearing for the respondents contend that as there is discrepancy with regard to the year of birth of the petitioner, in different documents as stated in the counter affidavit, the 3rd and 5th respondents have considered the age mentioned in the Service Register and declared the petitioner as superannuated by issuing the impugned order. As the impugned order is issued in conformity with the relevant Rules, no interference is required in this writ petition and sought to dismiss the writ petition.

13. It appears that during the year 2006, Service Rules were formulated for the employees working in different categories of posts in Noon Meal Scheme for all fresh recruits. Those persons, who were appointed as Cooks and Assistant Cooks prior to 2006 were subjected to undergo medical examination before the competent Medical Officer to ascertain their age. It appears that the petitioner along with 21 Cooks and 18 Cook Assistants, appeared before the competent Medical Officer and on examination of the petitioner, a certificate has been issued on 02.03.2006 by the Joint Director of Health Services, Dindigul, certifying the age of the



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petitioner as 40 years. As and when the competent Medical Board issued such certificate certifying the age of the petitioner as 40 years as on the date, the date of birth has to be entered in the Service Register as 01.07.1966. But, in the case of the petitioner, the said medical certificate was not considered and basing on the entries in the Service Register of the petitioner, which was made earlier without any basis, the 3rd respondent issued the impugned proceedings declaring the petitioner as superannuated.

14. The contention of the respondents that they did not ask the petitioner to go for medical examination for determination of her age and the petitioner herself underwent to medical examination and obtain the certificate from the Medical Board is not untenable.

15. It is known to all that no Medical Board, which is constituted by the State Government will not entertain any person for examination to determine their age without any reference from the Government Departments or as per the Court Orders.



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impugned proceedings were issued on 09.12.2015. If all the records in the respondents' office are maintained properly, the proceedings for declaration of superannuation of the petitioner ought to have been issued much earlier than the date of superannuation. Besides this, as contended by the respondents in their counter that there are different dates mentioned with regard to the year of birth of the petitioner, it can be visualised differently. Out of all the documents mentioned in the counter, the certificate issued by the District Medical Board is authenticative and it has to be treated as bona fide document to consider the age of the petitioner, as it was issued by the competent medical authority after examining the petitioner physically. If the respondents consider the certificate issued by the Joint Director of Health Services, Dindigul, dated 02.03.2006, the petitioner would attain the age of superannuation only in the year 2024. As such, it appears that the 3rd respondent issued the impugned proceedings erroneously without considering the age certificate issued by the competent Medical Board in proper manner. Non-consideration of the medical certificate of the petitioner with regard to her age on par with her co-employees, who were subjected to medical examination in the year 2006, is discriminatory and in



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violation of Article 14 of the Constitution of India. As such, the order impugned in this writ petition is liable to be set aside.

18. In view of the above stated reasons, this writ petition is allowed with the following directions:

- i. The impugned order in Na.Ka.No.1400/2014/Aa6 dated 09.12.2015 issued by the 3rd respondent is hereby set aside;
- ii. The respondents are directed to reinstate the petitioner into service forthwith and continue her till the date of superannuation as per the certificate issued by the competent Medical Board;
- iii. The respondents shall pay all monetary benefits to the petitioner for which she is entitled from 01.07.2014 to till the date of reinstatement;
- iv. No costs; and
- v. Consequently, connected miscellaneous petitions are closed.

07.08.2023

Note: Issue order copy by 09.08.2023

NCC : Yes/No

Index : Yes/No

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BATTU DEVANAND, J.

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Pre-delivery Order made in
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