

**THE HON'BLE SRI JUSTICE A. ABHISHEK REDDY**

**WRIT PETITION No.1075 of 2012**

**ORDER:**

This Writ Petition under Article 226 of the Constitution of India, is filed by the petitioner seeking the following relief:

*"..to issue an order, direction or writ in the nature of writ of Mandamus or any other appropriate writ declaring the action of the 2<sup>nd</sup> respondent in issuing the Notice in Proc:APBCL/IMFL/RR-II Depot/USW/ 2011-2012 dated 08-01-2012 as wholly illegal, arbitrary, unjust and contrary to their own records which were prepared on the basis of medical certificate dated 10-02-1990 issued by the Deputy Civil Surgeon, Osmania General Hospital, Hyderabad and consequently direct the respondents to continue the petitioner in service till 10-02-2016 on the basis of Medical Certificate dated 10-02-1990 issued by the Deputy Civil Surgeon, Osmania General Hospital, Hyderabad and pass such order or orders.."*

2. Heard the learned counsel for the petitioner, learned Standing Counsel for the respondents-Corporation and perused the record.

3. Learned counsel for the petitioner has stated that the petitioner was appointed as un-skilled worker at the erstwhile Arrack Bottling Unit, Hyderabad on 01.09.1987 of the 1<sup>st</sup> respondent-Corporation and thereafter by virtue of the impugned Notice vide Proc:APBCL/IMFL/RR-II Depot/USW/

2011-2012, dated 08.01.2012, which is challenged in the present writ petition, she was retired from service prematurely with effect from 10.02.2012. Learned counsel has stated that the petitioner has made a representation to the authorities concerned on 12.11.2011 for the rectification of her date of birth which was entered wrongly in the service record. Learned counsel has also stated that as per the Medical Certificate issued by the Deputy Civil Surgeon, Osmania General Hospital, Hyderabad, the age of the petitioner was 32 years as on 10.02.1990. Learned counsel for the petitioner has further stated that the authorities concerned has wrongly entered the date of birth of the petitioner as 35 years as on the date of her joining into the duty i.e., on 01.09.1987 and made her to prematurely retire from service with effect from 10.02.2012 and that if the date of birth as per the Doctor Certificate is taken into consideration, the petitioner will get a service of around four years more. Learned counsel has stated that as per the records, the date of birth of the petitioner is 1958 but the authorities have entered wrongly as 1954. Learned counsel also stated that in respect of other workers, the date of birth based on the age certificate given by the Doctor was entered,

but in respect of the petitioner, the same was denied and therefore, the learned counsel prayed this Hon'ble Court to allow the present writ petition.

4. *Per contra*, learned Standing Counsel appearing on behalf of the respondents-Corporation has stated that the certificate issued by the Deputy Civil Surgeon, Osmania General Hospital, Hyderabad, on 10.02.1990 is not an age certificate but only a certificate of physical fitness. Learned Standing Counsel further stated that the said physical fitness certificate cannot be correlated to age certificate and that the petitioner to suit her needs has given different dates of birth at different point of time. That as per the original service record, the date of entering of the petitioner into the service was on 01.09.1987 and her date of birth was 10.02.1954 and she retired from service on 10.02.2012 on attaining the age of superannuation. The certificates relied upon by the petitioner cannot be taken into consideration as the petitioner has entered into service on 01.09.1987 and she did not take any steps to get her age rectified in the service register till the fag end of her service. For the very first time, the petitioner has made a representation on 12.11.2011 i.e, three months prior

to her date of retirement. Learned Standing Counsel has further stated that challenging the orders dated 01.02.2012 passed in W.P.M.P.Nos.1327 and 1328 of 2012 in W.P.No.1075 of 2012 passed by this Court, the petitioner herein/appellant has filed W.A.No.162 of 2012 and the said Writ Appeal was dismissed by a Division Bench of this Court vide judgment dated 09.02.2012. The learned Standing Counsel has placed on record the judgment dated 09.02.2012 passed in W.A.No.162 of 2012 and ultimately, prayed to dismiss the present Writ Petition.

**5.** Admittedly, in the present case, the petitioner has entered into service on 01.09.1987 and her age was 35 years at the time of joining into service. The petitioner did not take any steps to get her date of birth rectified till the fag end of her service. The petitioner has filed a representation on 12.11.2011 seeking rectification of her date of birth, three months prior to her date of superannuation. This Court as well as the Hon'ble Supreme Court of India, in catena of cases, has time and again observed that the service record cannot be rectified/altered at the fag end of the career of the person. Though much reliance has been placed by the petitioner on

the age certificate issued by the Deputy Civil Surgeon, Osmania General Hospital, Hyderabad, a perusal of the same reveals that it is only a certificate of physical fitness given by a Medical Officer but not an age certificate. Admittedly, vide order dated 01.02.2012 passed in W.P.M.P.Nos.1327 and 1328 of 2012 in W.P.No.1075 of 2012, this Court declined to grant any interim relief to the petitioner. Aggrieved by the same, the petitioner herein has filed W.A.No.162 of 2012 and the said Writ Appeal was dismissed by a Division Bench of this Court vide judgment dated 09.02.2012, wherein it was held as follows:

*“5. The appellant has not filed any school record at the time of employment and it is produced on the verge of retirement only. However, we are not inclined to express any opinion with regard to the correctness or otherwise of her date of birth entered in the Provident Fund Account as well as in the service record. The medical certificate dated 10.02.1990 produced by the appellant is only a Certificate of Physical Fitness issued by a Government Doctor. The age as per the said certificate is based on her own statement. (emphasis supplied)*

*The date of birth as entered by APBCL is not based on the medical certificate, but on her own statement made in 1989 for the purpose of enrolment in the Provident Fund Scheme.*

*As long as the said medical certificate is not challenged, the date of birth entered by APBCL is conclusive and final.*

*The fact remains that in spite of having school certificate, the appellant produced medical certificate at the time of employment and she deviated the Standing Order 39 of the APBCL.*

*6. Having regard to the facts and circumstances of the case, we are of the opinion that the decision of APBCL as per the proof of age is final and conclusive and therefore, the appellant is not entitled to any relief as sought for. The order of the learned single Judge is perfectly justified and it cannot be interfered with. (emphasis supplied)*

*7. Accordingly, this writ appeal is dismissed."*

**6.** Pursuant to the notification vide Circular No.APBCL/IR/USW (Recruitments)/2011/12538, dated 17.11.2011 notifying the dates of retirement of workers due in the year 2012, the petitioner has filed a representation before the respondent No.2 seeking change of her date of birth from 10.02.1954 to 10.08.1962 on the basis of School Transfer Certificate but the same has been rejected by the authorities concerned vide Memo No.APBCL/IR/USW(D.O.B)/2011/12837, dated 02.01.2012. Basing on the said Memo, the respondent No.2 issued the impugned Notice vide Proc:APBCL/IMFL/RR-II Depot/USW/ 2011-2012 dated 08-01-2012. As seen from the record, the petitioner has been taking various stands with regard to the date of birth from time to time to suit her needs and the same cannot be countenanced. Once the date of birth is entered in the service

register, the same will be construed as correct and binding on the employee. If the petitioner was of the opinion that her date of birth was entered wrongly in the service record, she ought to have taken necessary steps at the earliest point of time for getting the same rectified/corrected with supporting documents. But in this particular case, the petitioner has approached the authorities concerned at the fag end of the service, i.e., three months prior to her retirement.

***In State of Punjab and Others v. S.C.Chadha*<sup>1</sup>**, the Hon'ble Supreme Court in paragraph 11, held as follows:

*11. "An application for correction of the date of birth should not be dealt with by the courts, tribunal or the High Court keeping in view only the public servant concerned. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose the promotion forever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. This is certainly an important and relevant aspect, which cannot be lost sight of by the court or the tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case on the basis of clinching materials which can be held to be conclusive in nature, is made out by the respondent and that too within a reasonable time as provided in the rules governing the service, the court or the*

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<sup>1</sup> (2004) 3 SCC 394

*tribunal should not issue a direction or make a declaration on the basis of materials which make such claim only plausible. Before any such direction is issued or declaration made, the court or the tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be within at least a reasonable time. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant, to prove about the wrong recording of his date of birth, in his service-book. In many cases it is a part of the strategy on the part of such public servants to approach the Court or the tribunal on the eve of their retirement, questioning the correctness of the entries in respect of their date of birth in the service-books."*

***In State of Tamil Nadu v. T.V. Venugopalan<sup>2</sup> and State of Orissa v. Ramanath Patnaik<sup>3</sup>***, the Hon'ble Supreme Court held as follows:

*"when the entry was made in the service record and when the employee was in service he did not make any attempt to have the service record corrected, any amount of evidence produced subsequently is of no consequence."*

7. In the instant case, the petitioner has been taking different stands with regard to her date of birth and has approached the authorities at the fag end of her service. Even though the petitioner has entered the service in the year

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<sup>2</sup> (1994) 6 SCC 302 : 1994 SCC (L&S) 1385 : (1994) 28 ATC 294

<sup>3</sup> (1997) 5 SCC 181 : 1997 SCC (L&S) 1141

1987, she did not bother to get her date of birth corrected, if she was of the opinion that the date of birth was wrongly entered in the service record within reasonable time.

**8.** In view of the above circumstances, this Writ Petition fails and the same is liable to be dismissed.

**9.** Accordingly, this Writ Petition is dismissed. No costs.

Miscellaneous petitions, if any, pending in this writ petition, shall stand closed.

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**A. ABHISHEK REDDY, J**

Date: 06.02.2023  
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