



W.P.No.28907 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 16.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.No.28907 of 2010

and

M.P.No.01 of 2010

R.Kanjamalai

....Petitioner

Vs

1. Neyveli Lignite Corporation,
Rep. By its Director (Personnel),
Corporate Office,
Neyveli -1.
2. The Chief Manager (Personnel),
Thermal Power Station-I,
Neyveli Lignite Corporation,
Neyveli -7.
3. The Senior Manager (Personnel),
Thermal Power Station -I,
Neyveli Lignite Corporation,
Neyveli -7.

....Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, after calling for the records pertaining to the order in Memo No.TPS-1/P&A/L:WI/2004 dated 21.05.2005 issued by the 2nd respondent, order in Memo No.TPS-1/P&A/Labour/Canteen/543/2010 dated 10.05.2010 issued by the 3rd Respondent and the order in Letter No.TS-1/CM/P&A/G-1/1527/2010,



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dated 16.12.2010, quash the same and consequently direct the Respondents to continue the petitioner in service till he attains the age of 60 years and till the end of the calendar month based on his date of birth namely 07.05.1954 as per the school certificate/record sheet and as per the entries made in the official records at the time of the petitioner's entry into service, award costs.

For Petitioner : Mr.V.Ajoy Khose

For R1 : No appearance

For R2 & R3 : Mr.N.A.K.Sarma

ORDER

This Writ Petition is filed calling for the records pertaining to the order in Memo No.TPS-1/P&A/L:WI/2004 dated 21.05.2005 issued by the 2nd respondent, order in Memo No.TPS-1/P&A/Labour/Canteen/543/2010 dated 10.05.2010 issued by the 3rd Respondent and the order in Letter No.TS-1/CM/P&A/G-1/1527/2010, dated 16.12.2010, quash the same and consequently direct the Respondents to continue the petitioner in service till he attains the age of 60 years and till the end of the calendar month based on his date of birth namely 07.05.1954 as per the school certificate/record sheet and as per the entries made in the official records at the time of the petitioner entry into service, award costs.

2. The case of the petitioner is that, petitioner joined as a Cleaner in



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the Canteen situated at Thermal Power Station-I on 11.11.1970. He passed 8th standard and produced the transfer certificate/record sheet from the School, in which he studied. At the time of his entry to service, his date of birth was entered as 07.05.1954 in the Record Sheet/Transfer Certificate. The ID Card and the records issued to him also reflects this date as date of birth. Meanwhile, without assigning any reason, he was directed to appear before the Medical Officer. Though, he appeared before the Medical Officer, he was not furnished with the copy of the report of the Medical Report. In 2007, he was issued a proceeding dated 21.02.2005 in Memo No.TPS-1/P&A/L:W1/2004 dated 21.02.2005. From that, he came to know that, his age was determined as 52 years as on 01.01.2002. He felt ill and took treatment in the Apollo Hospital. He made his representations dated 26.11.2008 to the 1st respondent objecting the determination of his age as 51 years as on 01.01.2002. However, his request was not considered. Again, he made a representation dated 15.05.2010 stating that, as per records, his date of birth was taken as 07.05.1954. This matter was referred to Vigilance Department. Despite the report given by the Vigilance Department, 2nd respondent passed an impugned order dated 16.11.2010 stating that, representation was made 3 years after assessment of date of birth and



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therefore, his representation was barred. In the said circumstances, this Writ Petition was filed.

3. It is the submission of the learned counsel for the petitioner that, as per the record sheet issued to the petitioner, his date of birth is shown as 07.05.1954. Therefore, it is not right on the part of the respondent to determine the age of the petitioner as 51 years as on 01.01.2002, without any scientific assessment, but merely based on the physical assessment made by the Doctor. Thus, this Writ Petition is filed.

4. In support of his submission, the learned counsel for the petitioner produced the judgment of the Hon'ble Supreme Court of India in **(1981) 3 SCC in Sarjoo Prasad Vs. General Manager and another**, wherein it is held that, once the date of birth given by a person is accepted, it is not open to the Authority to change the date of birth without giving the opportunity of hearing to the person.

5. In response, the learned counsel for the respondent submitted that,



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petitioner himself gave an undertaking on 30.04.2022 stating that, he had no records to show his date of birth and therefore, he is ready to accept the age assigned by the Medical Officer. After giving such undertaking, it is not open to the petitioner to contest the age fixed by the Medical Officer.

6. Considered the rival submissions and perused the records. From the records produced, especially ID card and Medical Identity card produced by the petitioner, it is seen that, his Date of Birth is 07.05.1954. In support of his contention that he was born on 07.05.1954, he produced the copy of the record sheet, wherein it shows the petitioner's date of birth as 07.05.1954. There is documentary evidence in the form of record sheet to show that, petitioner was born on 07.05.1954 and that was reflected in ID card and Medical Identity Card. It is not known, on what basis, the respondent determined the age of petitioner as 52 as on 01.01.2002. Only in the absence of records evidencing the date of birth, age can be ascertained by the Medical Officer, that too after following necessary procedure like Ossification Test, Dental Test etc., It appears that, no such test had been conducted prior to ascertaining the age of the petitioner as 52 as on 01.01.2002. May be at the time of giving an undertaking on



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30.04.2022, petitioner was not in possession of Record Sheet. Now, that is produced for perusal of this Court. It is prima facie established that, petitioner's date of birth was 07.05.1954. In the said circumstances, undertaking given by the petitioner on 30.04.2022 is not legal and cannot be accepted.

7. In view of the reasons stated above, this Court quashes the orders of the 2nd & 3rd respondents and direct the respondents to treat the petitioner had been in service till 31.05.2014, taking his date of birth as 07.05.1954 and provide him all the necessary and consequential monetary and other benefits.

8. Accordingly, this Writ Petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

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Index :Yes/No
Internet:Yes/No
Sma



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To

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G.CHANDRASEKHARAN, J

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