

1
2023:PHHC:165962

CWP-23083-2016 (O&M)

Reserved on: 02.09.2023
Pronounced on: 04.01.2024

Rachhpal Kaur and others

Petitioners

 V/s

State of Punjab and others

Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. A.K. Kalsy, Advocate,
Mr. Abhimanyu Kalsy, Advocate and
Mr. Sumedha Kalsy, Advocate for the petitioners.

Mr. TPS Walia, AAG Punjab.

Ms. Roja Agnihotri, Advocate
for the respondents No.4 and 5.

DEEPAK MANCHANDA J.

By way of the present petition, the reinstatement of the regular services of the petitioners has been prayed for in compliance with the order bearing No.DDSS/S4/131 dated 03.05.2013 (Annexure P-9) passed by the Deputy Director, Urban Local Bodies, Ludhiana i.e. respondent No.3, which were terminated vide resolution No.4 dated 30.1.2013.

The brief facts emanated from the pleadings of the present case are that the petitioners were appointed as part-time workers to work for four hours as Safai Karamcharis in the area of Nagar Panchayat, Maloudh w.e.f. September 1994, March 1996, July 1994 and March 1993, respectively. It is mentioned that resolution No.19 dated 19.12.2011 was passed by the Director Local Bodies i.e. respondent No.2 to regularize the part-time Safai Karamcharis

and in pursuance of the said resolution, the petitioners were regularized vide order dated 30.03.2012 in the pay scale of Rs.4900-10680/-+Grade Pay of Rs.1300/- (as per revised scale). Further, vide said order of regularization, the petitioners were directed to submit their Medical Certificates issued by the Civil Surgeon, Ludhiana and Character Certificates from the Police Department along with affidavits.

As per pleadings, in compliance with the said order, the petitioners submitted their Medical Certificates, wherein their age was certified to be 45 years, 46 years, 45 years and 46 years respectively. Thereafter, vide resolution no.4 dated 30.1.2013, their services were terminated by the respondents No.4 and 5 since the valid age proofs were not submitted by them. The reference of similarly situated other six persons along with Inder and Pala Ram mentioned in the resolution No.19 dated 19.12.2011, has also been made to claim parity, who were also appointed/regularized on the same posts in the same manner and on similar terms and conditions, but their services were never terminated. However, petitioners retained on D.C rates and respondent No.3 vide its order bearing No.DDSS/S4/131 dated 03.05.2013 cancelled the resolution No.4 dated 30.01.2013 vide which the services of the petitioners were terminated.

Learned counsel for the petitioners contends that as per Medical Certificates (Annexures P-5 to P-8) submitted by the petitioners, their age was certified to be less than 47 years and based on same the services were regularized from part-time safai Karamcharis to regular safai Karamcharis. He further contends that apart from the aforementioned certificates, petitioners did not furnish any other document to prove their age, whereas, as per Annexure R-1 to Annexure R-9 annexed with the reply filed by respondents No. 4 and 5 where

neither there is a registration number, date of registration nor there is any date of issue. Moreover, the date of birth in Annexure R-2 of petitioner No.1 is mentioned as 10/3/1967, however, in Annexure R-1, it is mentioned as 10/03/1964. Learned counsel for the petitioners also argues that the medical certificates issued by the Civil Surgeon, Ludhiana are correct where the ossification test was also done before issuing the medical certificate confirming the age of the petitioners. He again argues that the Civil Surgeon has rightly determined the age of the petitioners, where even respondent No.3 also accepted the medical certificates and set aside the termination of the petitioners by cancelling resolution No. 4 dated 30/01/2013 passed by the respondent Nos. 4 and 5, which has not been challenged by the respondents till today so respondents cannot plead against the cancellation order i.e. Annexure P-9 and are stopped from contesting the present writ petition, hence directions be issued to implement the same and petitioners be reinstated in service.

On the other hand, learned counsel for respondent No. 4 and 5 submits that the petitioners were directed to submit their proof of age however the medical certificates submitted by the petitioners were not convincing and the discrepancies were found in said certificates. Further, the medical certificates on which the petitioners are relying are not genuine documents in respect of age proof as the same have been issued by the Medical Officer/Civil Surgeon Ludhiana based on an affidavit given by the said petitioners and the same are without any ossification test. She also submits that the services of the petitioners were rightly terminated by the answering respondents as they have failed to furnish genuine documents in respect of their age proof to prove their age to be less than 47 years, which is an essential ingredient of the policy and

necessary requirement to avail the benefit of the policy for regularization of services. She has stated that the answering respondents provided sufficient opportunities to the petitioners to supply the requisite documents to prove their age that they fulfill the requirement of the age of 47 years, but the petitioners even after receipt of notices neither replied to the said notices nor furnished the documents of their age proof and as such the petitioners cannot take the benefit of their wrongs.

Having heard learned counsels for the parties and perused the material available on record.

Upon notice, a reply on behalf of respondents No.1 to 3 has been filed wherein it has been stated that the petitioners have neither challenged any action of respondent Nos.1 to 3 nor sought any relief from respondent Nos.1 to 3. He submits that respondents No.1 to 3 are only performa party.

Reply on behalf of respondents No.4 and 5 has been filed wherein it has been stated that the services of the petitioners were regularized by issuing the office order dated 30.03.2012 and the petitioners were directed to submit the documents which could prove the factum of their age as the maximum age limit was 47 years to avail the benefit of policy as per provisions vide which services of the petitioners were regularized. The documents furnished by the petitioners were not helpful to prove their age and hence their services were terminated vide resolution No.4 dated 30.01.2013 by the answering respondents.

The question before this court is whether the medical certificates issued by the civil Surgeon without the Ossification Test can be considered as valid age proof or after a due enquiry conducted by the respondents the

documents i.e voter list, birth certificate issued under Section 12 of Birth and Death Registration Act 1960 and ration card can be treated as valid age proof based on which the present controversy can be resolved.

The stand taken in the reply as well as additional affidavit 28/08/2023 filed in compliance with the order dated 03/08/2023 passed by this court by the respondents No. 4 and 5 is gone through and perused. In the present case the learned counsel for the petitioners has tried to justify the medical certificates based upon the ossification test, taking a specific stand in its replication dated 16.8.2023, so to proceed further we need to understand what is bone ossification test. However, it is to be noted that the ossification test varies based on individual characteristics and hence its reliability has to be examined in each case.

A textbook of Medical Jurisprudence and Toxicology by Modi, 26th Edition, pg. 221, delineates the factors relevant to determining the age-

(1) Height and Weight- it is opined that progressive increase in height and weight according to age varies so greatly in individuals that it cannot be depended upon in estimating age in medico-legal cases.

(2) Ossification of Bones - this sign helps determine the age until ossification is completed, for skiagraphy has now made it possible to determine even in living persons, the extent of ossification, and the union of epiphysis in bones.

The Hon'ble Supreme Court in the Writ Petition(Crl)No.121 of 2022 decided on 12.09.2022, titled "**Vinod Katar Vs. State of Uttar Pradesh**", has discussed the issue of ossification test at length and the same reads as under:

"What is a bone ossification test?"

54. The famous American philosopher Mark Twain once said,

“Age is an issue of Mind over matter. If you don’t mind, it doesn’t matter.” But the above is not the case in criminal jurisprudence when it comes to age. Here, age matters because law is mindful to it.

55. The bone ossification test (hereinafter “ossification test”) is a test that determines age based on the “degree of fusion of bone” by taking the xray of a few bones. In simple words, the ossification test or osteogenesis is the process of the bone formation based on the fusion of joints between the birth and age of twenty five years in an individual bone age is an indicator of the skeletal and biological maturity of an individual which assists in the determination of age. The most common method used for the calculation of the bone age is radiography of the hand and wrist until the age of 18 years beyond which the medial age of clavicle is used for bone age calculation till the age of 22 years as the hand and wrist bone radiographs cannot be computed beyond 18 years of age as the elongation of the bone is complete after adolescence. However, it must be noted that the ossification test varies slightly based on individual characteristics, therefore the ossification test though is relevant however it cannot be called solely conclusive.

*57. In **Vishnu v. State of Maharashtra**, (2006) 1 SCC 283, this Court clarified that the ossification test by the medical officer is to assist the court which falls under the ambit of medical expert opinion i.e., advisory in nature and not binding. However, such an opinion cannot override ocular or documentary evidence, which has been proved to be true and admissible as they constitute “statement of facts”. This Court in **Vishnu** (supra) placed reliance on **Madan Gopal Kakkad v. Naval Dubey**, (1992) 3 SCC 204, to hold that a medical witness is not a witness of fact therefore the opinion rendered by such a medical expert is merely advisory until accepted by the Court, however, once accepted, they become the opinion of the Court.*

Margin of error principle

*58. The bone ossification test is not an exact science that can provide us with the exact age of the person. As discussed above, the individual characteristics such as the growth rate of bones and skeletal structures can affect the accuracy of this method. This Court has observed in **Ram Suresh Singh v. Prabhat Singh**, (2009) 6 SCC 681: (2010) 2 SCC (Cri) 1194, and **Jyoti Prakash Rai v. State of Bihar**, (2008) 15 SCC 223: (2009) 3 SCC (Cri) 796, that the ossification test is not conclusive for age determination because it does not reveal the exact age of the person, but the radiological examination leaves a margin of two years on either side of the age range as prescribed by the test irrespective of whether the ossification test of multiple joints is conducted. The courts in India have accepted the fact that after the age of thirty years the ossification test cannot be relied upon for age determination. It is trite that the standard of proof for the determination of age is the degree of probability and not proof beyond reasonable doubt.*

*59. In the aforesaid context, we may also refer to a decision of this Court in the case of **Mukarrab v. State of Uttar Pradesh**, re-*

ported in (2017) 2 SCC 210, wherein this Court has observed in para 27 as under:

“... Following *Babloo Pasi v. State of Jharkhand*, (2008) 13 SCC 133 and *State of M.P. v. Anoop Singh*, (2015) 7 SCC 773, we hold that ossification test cannot be regarded as conclusive when it comes to ascertaining the age of a person. More so, the appellants herein have certainly crossed the age of thirty years which is an important factor to be taken into account as age cannot be determined with precision. ...”

60. In *Arnit Das v. State of Bihar*, (2000) 5 SCC 488, it was observed that the Court should not take a hyper technical approach while appreciating evidence for determination of age of the accused. If two views are possible, the Court should lean in favour of holding the accused to be a juvenile in border line cases. This approach was further reiterated by this Court in ***Rajendra Chandra v. State of Chhattisgarh***, (2002) 2 SCC 287, in which it laid down that the standard of proof of age determination is the degree of probability and not proof beyond reasonable doubt.

61. In *Rishipal Singh Solanki v. State of Uttar Pradesh*, (2021) SCC OnLine SC 1079, this Court observed explicitly that Section 94 of the 2015 Act does not give precedence to the matriculation and other certificates, to determine the age of person, since the said section only deals with the matter of procedure. This Court held that *lex non cogit ad impossibilia* (law does not demand the impossible) and when the ossification test cannot yield trustworthy and reliable results, such test cannot be made a basis to determine the age of the person and other available certificates may be taken into consideration.”

As discussed above the ossification test is not conclusive for age determination because it does not reveal the exact age of the person, moreover in present case neither Ossification test report is mentioned nor reference of the same has been made in the certificate issued by the Civil Surgeon on which the Learned counsel for the petitioners has tried to hinge upon his arguments. This Court finds that such medical certificates were simply arranged to claim benefit under the policy and same cannot be treated as valid documents. The affidavits Annexures R-10 to R-13 annexed with the additional affidavit shows that the petitioners accepted the terms and conditions of the appointment wherein it was clearly mentioned that they will not have any objection if they are dismissed without any notice. Learned counsel for the petitioners to support his

contentions has relied upon a judgment of Hon’ble Allahabad High Court and others, rendered in “*Parvati Kumari and others vs State of U.P*”, 2019(1)RCR (Civil) 847, which is not applicable to facts of the present case. Further, this is not the case of the petitioners that the documents produced by the respondents are forged, and there is no denying that the same were not valid documents nor wrongly issued in the name of the petitioners. Petitioners have also not produced any document to show that they ever objected or complained about the issuance of all such documents to concerned authorities produced by respondents No. 4 and 5, which as per additional affidavit dated 28/08/2023 filed by respondents No. 4 and 5 are obtained from the official record as same were supplied by the petitioners at the time of their appointments. Hence, the date of birth certificates, voter list and ration card produced by respondents No. 4 and 5 cannot be ignored and the services of the petitioners were rightly terminated, who were later adjusted on D.C rates.

Keeping in view the aforesaid discussion, facts and circumstances, and the submissions made by respondents no. 4 and 5 are accepted.

Consequently, the present writ petition is dismissed.

Pending application(s), if any, also stand disposed of accordingly.

04.01.2024
sapna/vanita

(DEEPAK MANCHANDA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No