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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 6555/2017**

**THE PRINCIPAL SECRETARY IRRIGATION AND FLOOD
CONTROL DEPARTMENT AND ANR**

..... Petitioners

Through: Mr. Yeeshu Jain, ASC with Mr.
Hitanshu Mishra and Mr. Vinit Roy,
Advocates with Mr. Roshan Kaushal,
Jr. Engineer.

versus

MAHABIR PRASAD

..... Respondent

Through: Mr. Saurabh Kansal, Ms. Pallavi
Sharma Kansal, Mr. Tushar Alok, Mr.
Suraj Kuar Jha and Ms. Varsha Singh,
Advocates.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

10.04.2024

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1. The present writ petition under Article 226 of the Constitution of India seeks to assail the order dated 04.10.2016 passed by the learned Central Administrative Tribunal in O. A. No. 3322/2013. Vide the impugned order, the learned Tribunal has directed the petitioners to consider the date of birth of the respondent as 20.05.1953 as against 20.05.1939, based on which date he had superannuated from service on 01.06.1999 itself. The learned Tribunal has consequently directed the petitioner to pay arrears of salary to the respondent for the period between 01.06.1999 to 31.05.2013, the date on which he would have superannuated if his date of birth had been taken as 20.05.1953. While issuing these



directions, the learned Tribunal has accepted the respondent's claim that as stated in his affidavit dated 16.10.1989, his date of birth was 20.05.1953.

2. Learned counsel for the petitioners submits that the learned Tribunal has failed to appreciate that the respondent's date of birth was taken as 20.05.1939 on the basis of the report submitted by the Staff Surgeon, GTB Hospital, Delhi, who had on 22.08.1994 opined that by appearance, the respondent seemed to be 55 years of age. Consequently, based on this opinion of the Staff Surgeon, the respondent's date of birth was correctly taken as 20.05.1939. He, therefore, prays that the impugned order be set aside.

3. On the other hand, learned counsel for the respondent supports the impugned order and contends that the petitioners have gravely erred in relying on the report of the Staff Surgeon, GTB Hospital, Delhi, the respondent's age even though the same was not based on any medical test but was given merely on the basis of his appearance. He submits that if the petitioners had any doubt regarding the date of birth provided by the respondent in his affidavit, they ought to have conducted appropriate medical tests for determining his age. He, therefore, prays that the writ petition be dismissed.

4. Having heard learned counsel for the parties and perused the record, we are of the view that the learned Tribunal was correct in holding that the respondent's age could not be determined only on the basis of his appearance. However, that does not imply that the respondent's affidavit claiming his date of birth to be 20.05.1953 should be accepted without any further inquiry. We are, therefore, of



the view that the question regarding the respondent's age can be easily resolved by conducting an Ossification Test of the respondent to determine his age. We, therefore, propose to refer the respondent for conduct of his Ossification Test by a Government run hospital. Both sides are agreeable to this suggestion.

5. In the light of the aforesaid, we direct the Director, RML Hospital to constitute a Medical Board for conducting an Ossification Test of the respondent. The Medical Board so constituted will furnish its report after examining the respondent and conducting his Ossification Test within a period of 8 weeks from today. Any communication in this regard requiring the presence of the respondent will be served on him through his counsel Mr. Saurabh Kansal. Copies of the report will be provided both to the petitioner as also to the respondent.

6. Learned counsel for both parties submit that the parties will be bound by the findings regarding the respondent's age as may be given by the Medical Board in its report to be furnished in terms of this order. In the light of this fair stand taken by the parties, we are not examining the merits of the petitioner's challenge to the impugned order and disposing of the writ petition by directing that in case, the respondent's age is found to be commensurate with his date of birth of 20.05.1953 as claimed by him, all benefits in terms of the impugned order will be paid to him within three months from the date of furnishing of the report. However, in case, his age is found to be commensurate with the date of birth of 20.05.1939 as claimed by the petitioners, he will not be entitled to claim any benefits in terms of the



impugned order.

7. The writ petition is disposed of in the aforesaid terms making it clear that if any information is required by either side, it will be open for them to move an appropriate application in the present petition itself.

8. A copy of this order be forwarded to the Director, RML Hospital, New Delhi, for information and compliance.

REKHA PALLI, J

RAJNISH BHATNAGAR, J

APRIL 10, 2024

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