
(2013) 07 AP CK 0004
In the Andhra Pradesh High Court
Case No : WP. No. 1584 of 2013

Bojja Bhumaiah

APPELLANT

Vs

General Manager, Open Cast Mines-I, Ramagundam Area-III,
Singareni Collieries Co. Ltd. and Another

RESPONDENT

Date of Decision : 13-07-2013

Acts Referred:

Citation : (2014) 1 ALD 158 : (2014) 2 ALT 94 : (2014) 2 LLN 85

Hon'ble Judges : Noushad Ali, J

Bench : Single Bench

Advocate : V. Sree Ranga Rao, for the Appellant; Nandigam Krishna Rao, (SC for Singareni Collieries), for the Respondent

Judgement

Noushad Ali, J.—The petitioner was initially appointed as a Coal Filler on 14.8.1981 in the Singareni Collieries Company Limited, and later promoted as Drill Operator in the Mines. He has filed this writ petition challenging the order of the 2nd respondent dated 6.2.2012 retiring him from service from 31.7.2013. The petitioner is disputing his age, contending that he will reach the age of superannuation of 60 years on 14.8.2014. The petitioner is an illiterate. He did not submit recorded proof of his age at the time of his appointment. He was medically examined and was certified to be 28 years of age as on 5.7.1981. If the said age is taken into consideration, his retirement date is 31.7.2013. However certain discrepancies occurred in the later service records of the petitioner. In the Service and Identity Card (Service Card), his age is noted as 27 years as on 14.8.1981 and as per the said entry the petitioner would retire on 31.8.2014. In yet another record, viz., Employees Transfer Record, his date of birth is mentioned as 14.8.1952, thereby he would retire on 31.8.2012. Yet in another record, viz., CMPF Form-A, his date of birth was shown as 5.7.1953, in which case his retirement would be on 31.7.2012.

2. Soon after noticing the discrepancies, the petitioner submitted a representation on 29.6.2011 to correct the date of birth as 10.6.1984 in

consonance with the Service and Identity Card. The 2nd respondent referred the matter to the Area Age Determination Committee (for short "the AADC") for assessment of the petitioner's age. The said Committee determined the age of the petitioner as 28 years as on 5.7.1981. It is on the basis of the said report, the petitioner is sought to be retired on 31.7.2013.

3. Learned Counsel for the petitioner would contend that the assessment of the age made by the AADC is not based on any acceptable assessment. The AADC has not medically examined the petitioner, which it is expected to do before an assessment is made. The AADC has merely relied on the disputed records maintained by the Company and has given wrong assessment.

4. Sri Nandigam Krishna Rao, learned Standing Counsel for the respondent Company would argue that the age of the petitioner was properly assessed basing on the medical report submitted at the time of his appointment. The petitioner has accepted the determination of his age as assessed by the Committee and allowed the said assessment to become final. Therefore, according to the learned Standing Counsel, the petitioner is not entitled to challenge the impugned order of retirement.

5. I have heard the aforesaid contentions of the learned Counsel for the parties with reference to the material available before this Court.

6. There is no Statute governing the procedure for age determination of the employees of the respondent-Company, in case of a dispute. However, a Dispute Resolution Mechanism is adopted by the Company by entering into a bipartite agreement with the Unions in the JBCCI-IV Meeting held on 19th and 20th August, 1987. As per the said agreement, a Committee called "Area Age Determination Committee/Medical Board" is constituted with the General Manager/Chief Personnel Manager and Medical Officer In-charge of the area as members. Two types of cases can be referred to the Committee/Medical Board for assessment-(i) cases in which there is a variation with regard to the age of the employees recorded in the records, such as Form-B Register, CMPF records and Identity Cards. The Committee will consider the evidence available with the management and the evidence that may be adduced before it by the employee concerned and assess the age in accordance with the requirement of the Medical Jurisprudence. The Medical Board then, on the basis of such report, will indicate the accurate age; and (ii) in a situation where there is a glaring disparity in the record with regard to the apparent age of the employee, such cases may have to be referred to the Apex Medical Board located at the headquarters of the Company for determination. In such cases, the General Manager of the concerned area should also send his specific recommendations to the Chief Personnel Officer for scrutiny and further action. Thus, in the aforesaid categories of cases, age determination shall have to be made by the AADC/Apex Medical Board, as the case may be, and the age as determined by the said authorities shall be the age of the employee.

7. The aforesaid agreement makes it abundantly clear that in case where there are discrepancies in the age recorded in the records of the Company, the AADC is required to assess the age in accordance with the Medical Jurisprudence and the age shall be indicated by the Medical Board. The case of the petitioner falls in this category. Therefore, the AADC should have medically assessed the age of the petitioner, upon which the Medical Board ought to have indicated the accurate age of the petitioner. Instead, the AADC rested its decision only on the basis of the disputed records.

8. A perusal of the report of the AADC discloses that it has determined the age of the petitioner as 28 years as on 5.7.1981. It is beyond comprehension as to how the Committee had come to such a conclusion with regard to the petitioner's age at the time of his initial appointment. One can understand such a Committee determining the age of the petitioner as it appears at the present moment. On what basis the Committee could go back in point of time by several years is inexplicable. There is no credible material or basis, except the disputed documents, before the Committee, upon which it has determined the petitioner's age.

9. It is true that the petitioner has signed an undertaking contained in the said certificate that he had accepted the decision and did not raise any dispute on the decision of the AADC and that he has not challenged the assessment. It is equally true that the petitioner is an illiterate and ignorant of the consequences. Therefore, no importance can be attached to the declaration given by the petitioner.

10. Placing reliance on the judgment of a Division Bench in WA No. 886 of 2012, dated 18.7.2012, the learned Standing Counsel for the respondent Company seeks to support his contention that the petitioner, having acknowledged his age as assessed by the AADC and having not challenged the same, is not entitled to challenge the impugned order.

11. In the said case, the petitioner was a Clerk. Hence, it can be safely said that he is an educated person and he was aware what he was doing and its consequences. He was communicated the report of the Committee, but he did not challenge it. Therefore, in my considered view, the said judgment is not relevant to the facts of the present case.

12. For the foregoing reasons, the impugned order dated 6.2.2012 is set aside and the matter is remanded for fresh consideration. Consequently, the Area Age Determination Committee shall assess the age of the petitioner in accordance with the requirement of the Medical Jurisprudence and thereupon the Medical Board shall indicate the accurate age of the petitioner and communicate the same to the respondent Company for consequential action. This exercise shall be completed as expeditiously as possible, preferably within a period of four weeks from the date of receipt of a copy of this order. Pending such decision, the petitioner shall be continued in service.

13. Accordingly, this writ petition is allowed. No order as to costs. In view of the disposal of the writ petition, WPMP No. 1909 of 2013 is dismissed as unnecessary.