

(2009) 03 AP CK 0062
In the Andhra Pradesh High Court
Case No : Writ Petition No. 8740 of 2007

Kovuri Rajalingam

APPELLANT

Vs

Singareni Collieries Company Ltd. and Others

RESPONDENT

Date of Decision : 24-03-2009

Acts Referred:

Apprentices Act, 1961 — Section 2
Mines Act, 1952 — Section 40

Citation : (2009) 4 ALD 204 : (2009) 5 ALT 480

Hon'ble Judges : B. Seshasayana Reddy, J

Bench : Single Bench

Advocate : K. Vasudeva Reddy, for the Appellant; Nandigam Krishna Rao, for the Respondent

Judgement

B. Seshasayana Reddy, J.—The petitioner was appointed as Attendant in the 1st respondent Company on 24.04.1965. His date of birth was recorded as 20.04.1949 as on the date of entry into the service of the 1st respondent Company. The 1st respondent Company issued a Circular CRP/PER/IR/A/51/728, dated 01.04.2006/ 15.05.2006 for verification of records in respect of employees who have put in/likely to put in more than 42 years of service in the 1st respondent Company. Pursuant to the said circular, the petitioner, who has put in 42 years of service in the 1st respondent Company, was examined by the Apex Medical Board on 09.04.2007. The Apex Medical Board assessed the age of the petitioner as 60 years as on 09.04.2007 since he completed 42 years of service. The basis for the assessment is that the minimum age required for entry into the service of the 1st respondent company is 18 years and if the age of the petitioner as on 24.04.1965 is taken as 18 years, he would be attaining the age of 60 years as on 09.04.2007. Therefore, the petitioner was informed that he would be retiring from service with effect from 01.05.2007 vide Ref. No. YLD/JKOC/M/16/933, dt. 15.04.2007. It is the contention of the petitioner that his date of birth is 20.04.1949 and therefore, he is entitled to be in service till 30.04.2009. He filed this writ petition with the following prayer:

For the reasons stated in the affidavit, accompanying this Writ Petition, it is prayed that this Hon"ble Court may be pleased to issue a writ or order or direction, especially one in the nature of Writ of Mandamus:

(i) declare the impugned proceeding No. YLD/PER/23/917, dt.12.04.2007 issued by the 1st respondent and proceeding No. YLD/JKOC/M/16/ 933, dt. 15.04.2007 issued by the 3rd respondent as illegal and arbitrary and set aside the same.

(ii) Consequently direct the respondents to continue the petitioner in service till 30.04.2009, duly granting all other consequential benefits, such as continuity of service, back wages etc.

(iii) And pass such other order or orders as this Hon"ble Court may deem fit and proper in the circumstances of the case.

2. Rule Nisi came to be issued on 24.04.2007. An interim direction to the respondents to continue the petitioner in service has also been issued on the even date vide WPMP No. 11193 of 2007.

3. The respondents entered appearance and moved WVMP No. 311 of 2009 with a prayer to vacate the interim order dated 24.04.2007 passed in WPMP No. 11193 of 2007. It is stated in the affidavit filed in support of the vacate stay petition that minimum age as per the Mines Act, Rules and Regulations to enter into the 1st respondent Company services is 18 years and if the petitioner's age was considered as 18 years as on the date of his entry into service i.e. 24.04.1965, he should retire from service with effect from 30.04.2007. For better understanding of the plea of the respondents, I deem it appropriate to refer paras.4 to 8 of the affidavit filed in support of the vacate stay petition, which read as hereunder:

4. I submit that a mistake had taken place when the petitioner entered into the respondent company services. At that time, the date of birth of the petitioner was assessed as 20.04.1949 and he joined the Company on 24.04.1965 i.e. to say he was 16 years of age at the time of entering into the services in the company.

5. I submit that the respondent company is governed by the Mines Act, Rules and Regulations which specifies that at the time of entering into the company services, one should have minimum 18 years of age. The reason being it is hazardous to employ persons who are below 18 years of age in underground mines which involves usage of explosives for blasting of coal seams and extraction of coal.

6. I submit that the petitioner did not produce any proof of age at the time of entering into service. By physical appearance, his date of birth was recorded as 20-4-1949 and he joined in the services of respondent company on 24-4-1965 (when he was 16 years of age) which is contrary to Mines Act and Rules and as such a mistake has crept in the records of respondent company.

7. I submit that the respondent company has taken a decision to review the case of employees who have put in/likely to put in more than 42 years of service in the company. Accordingly, the petitioner as well as others have been reviewed by the Medical Board. The Medical Board reviewed the age of the petitioner as 60 years as on 09.04.2007 and he should retire from company service w.e.f. 30-4-2007.

8. I submit that the petitioner is continuing in service beyond the date of superannuation in pursuance of interim order passed by this Hon"ble Court on 24-4-2007. Further, as per the interim direction passed by this Hon"ble Court, the WPMP was not posted for hearing after summer vacation of 2007 and as such it is expedient to hear the writ petition at an early date.

4. The writ petitioner filed reply affidavit. It is stated in the reply affidavit that the respondents having known of his age as 16 years as on 24.4.1965 permitted him to enter into service and therefore, it cannot be treated as a mistake. It is further stated in the reply affidavit that the respondents have no power to take any decision with regard to the date of birth contrary to the entries made in the service record.

5. When the vacate stay petition came up for consideration, with the consent of the learned Counsel appearing for the parties, the writ petition itself is taken up for final disposal.

6. Heard learned Counsel appearing for the petitioner and learned Standing Counsel appearing for the respondents.

7. Learned Counsel appearing for the petitioner submits that the respondents having entered the date of birth of the petitioner in the service records as 20.04.1949, it is impermissible for them to correct the date of birth after 40 years of service of the petitioner. A further submission has been made that the original entry in the service record has been based on the School Leaving Certificate and in which case, there is no need for the respondents to refer the petitioner for Apex Medical Board for assessing his age.

8. Learned Standing Counsel appearing for the respondents Company submits that as per the Mines Act, 1952, no person below 18 years of age shall be allowed to work in any mine or part thereof and therefore, the age of the petitioner was to be taken as 18 years by the date of entry into service i.e. on 24.04.1965, in which case, he would be attaining the age of superannuation i.e. 60 years as on 30.04.2007. He would also contend that the services rendered by him after 30.04.2007 by virtue of the interim order passed by this Court cannot be counted for any purpose such as gratuity etc. In support of his submissions, reliance has been placed on the decision of the Supreme Court in Employer in Relation to the AIR 2002 SC 2343 , wherein it has been held that when there is a specific provision, no person can work in the mines, who is underage.

9. Indisputably, after the commencement of the Mines (Amendment) Act, 1983, no person below 18 years of age shall be allowed to work in any mine or part

thereof. Section 40 of the Mines Act, reads as hereunder:

40. Employment of persons below eighteen years of age:- (1) after the commencement of the Miens (Amendment) Act, 1983, no person below eighteen years of age shall be allowed to work in any mine or part thereof.

(2) Notwithstanding anything contained in Sub-section (1), apprentices and other trainees, not below sixteen years of age, may be allowed to work, under proper supervision, in a mine or part thereof by the manager.

Provided that in the case of trainees, other than apprentices, prior approval of the Chief Inspector or an Inspector shall be obtained before they are allowed to work.

Explanation.-In this section and in Section 43, "apprentice" means an apprentice as defined in Clause (a) of Section 2 of the Apprentices Act, 1961).

The petitioner joined the services of the 1st respondent Company on 24.04.1965. As on that date, no adolescent shall be allowed to work in any part of a mine, which is below ground unless he has completed his sixteenth year. The virgin Section 40, reads as hereunder:

40. Employment of adolescents.- (1) No adolescent shall be allowed to work in any part of a mine which is below ground unless:

(a) he has completed his sixteenth year;

(aa) a medical certificate in the prescribed form granted to the adolescent by a certifying surgeon certifying that he is fit for work as an adult is in the custody of the manager of the mine;

(b) he adolescent carries while at work, a token giving a reference to such certificate;

(c) the adolescent has an interval for rest of at least half an hour after every four and a half hours of continuous work on any day.

(2) Notwithstanding anything contained in this Act, no adolescent who has been granted a certificate under Sub-section (1) shall be employed in any mine except between the hours of 6 a.m. and 6 p.m.

Provided that the Central Government may, by notification in the Official Gazette, vary the hours of employment of such adolescent in respect of any mine or class of mines so however that no employment of any such adolescent between the hours of 10 p.m. and 5 a.m. is permitted thereby.

It is explicit from virgin Section 40 of the Mines Act, that any person to be employed in the 1st respondent Company, the prerequisite is he should have completed his sixteenth year. Therefore, it is to be presumed that the petitioner completed his sixteenth year as on the date of entry into the service of the 1st respondent Company i.e. on 24.04.1965. Though the learned Counsel appearing

for the petitioner contended that the original entry in the service register of the petitioner is based on the school leaving certificate, no such certificate has been placed on record. Therefore, I am of the view that the date of birth recorded in the service record of the petitioner is not based on any authenticated certificate, in which case, the age of the petitioner to be taken as on the date of entry into service is that he completed his sixteenth year. Taking the age of the petitioner as on the date of his entry into service as 17 years, he would be retiring from service on attaining the age of 60 years i.e. 24.04.2008, which can be adjusted to 30.04.2008.

10. In view of the above discussion, I find that the petitioner should be treated as retired from service on attaining the age of 60 years i.e. as on 30.04.2008. Any service rendered by him subsequent to 30.04.2008 pursuant to the interim order passed by this Court shall not be counted for any purpose.

11. Accordingly, the writ petition is disposed of. Interim order dated 24.04.2007 passed in WPMP No. 11193 of 2007 stands vacated. No costs.