
(2014) 10 AP CK 0055
In the Andhra Pradesh High Court
Case No : Writ Petition No. 8992 of 2014

Sanikommu Venkateswara Reddy

APPELLANT

Vs

The Singareni Collieries Co. Ltd.

RESPONDENT

Date of Decision : 15-10-2014

Acts Referred:

Citation : (2015) 5 ALD 233

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Advocate : M.V. Raja Ram, Advocate for the Appellant; Nandigam Krishna Rao, Advocate for the Respondent

Judgement

R. Kantha Rao, J.—Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

2. The petitioner is a General Mazdoor in the respondent company. He submits that on being sponsored by the Employment Exchange, he was appointed as Badli Worker on 19.11.1982. In the records of the respondent company, his qualification was entered as 9th class. The Transfer Certificate issued by the Zilla Parishad Secondary School, Bayyaram, Vurgumpad Taluq, Khammam District discloses that he discontinued 10th class and his dater of birth is 25.06.1962. The petitioners case is that at the time of his initial appointment, he produced the Transfer Certificate, but the appointing authorities erroneously recorded his age as 29 years at the time of entering into service as on 19.11.1982 without any basis and not taking into consideration the date of birth mentioned in the Transfer Certificate. According to him, it is not a mistake and it is on account of non-application of mind. As a result of wrong entry of the date of birth made at the time of his initial appointment, the petitioner states that he was forced to retire from service on 31.08.2014 instead of 30.06.2022.

3. The petitioner submits that the officials of the respondent company are in the habit of entering the date of birth of the employees erroneously on their own

which also happened in his case. On receiving the copy of the Form-PS-3 filled by the Company, he was shocked to notice the wrong entry of his date of birth by the respondent company. He made sincere efforts to obtain certificate from the Employment Exchange, but ultimately in its letter dated 16.06.2011, the Employment Exchange responded stating that it recorded the name of the petitioner as X0210 (VII to IX) class on 01.09.1997 while allocating the Card No. SC/3576/77. The petitioner submits that on being sponsored by the Employment Exchange, he was appointed in the respondent company, after his appointment, the said entry had been removed from the Register of the Employment Exchange. The petitioner received information that the records would be kept only for 3 years in case of general and 5 years in case of SC and ST candidates and thereafter, they will be destroyed. Thus, after the petitioner secured employment his name and the related entry were deleted.

4. The petitioner submitted a representation dated 18.04.1999 to the respondent company to correct his date of birth on the basis of the Transfer Certificate. On the said representation, the 3rd respondent addressed a letter to the Additional Chief Engineer stating that the petitioner was given appointment on 01.01.1983 through Employment Exchange and also that he enrolled his name with 10th class TC, according to which, his date of birth is 25.06.1962. Thus, the 3rd respondent recommended his case to the Age Determination Committee in the light of the Circular dated 01.08.1988 as there is glaring disparity between the date of birth recommended and the apparent age of the petitioner.

5. The General Manager referred the case of the petitioner to the 5th respondent on 11.08.2001. Thereafter, the Age Determination Committee met on 25.08.2001 and assessed the age of the petitioner as per the letter of the General Manager dated 11.08.2001. The said Apex Committee decided the age of the petitioner as 47 years as on 28.08.2001.

6. According to the petitioner, the Age Assessment Committee had not disclosed basing on which evidence his age was determined by it as 47 years as on 28.08.2001 and they never disputed the genuineness of the Transfer Certificate. The version of the petitioner is that the assessment made by the Age Assessment Committee is contrary to the procedure prescribed by law as well as the Rules and Regulations of the respondent Company. There was no scientific analysis made by the respondent company which can form the basis for determination of his age, and the Age Assessment Committee totally ignored the Transfer Certificate submitted at the time of his initial appointment along with Employment Exchange Card which are crucial in determining his age.

7. In the aforesaid circumstances, the petitioner submits that he made a representation to the respondent company authorities on 19.06.2013 furnishing full particulars stating therein that the officials of the respondent company made false entries without looking into the entries in the Transfer Certificate and the letters addressed by him from time to time. The petitioner submits that Circular dated 01.08.1988 deals with the procedure for determination/verification of the

age of the employees, where there is variation in the records as to the date of birth, the Committee will consider the evidence available with the Colliery Management and/or adduced by the employee concerned and it will be required to assess the age in accordance with the requirement of Medical Jurisprudence and the Medical Board as far as possible indicate the accurate age assessed and not approximately; further, when there is glaring disparity between the date of birth recorded by the company and the apparent age of the employee, such cases will be referred to the Apex Medical Board for determination of the age by the Area Age Determination Committee. The petitioner further submits that in the proceedings dated 25.08.1988 of the National Coal Wage Agreement III and Instruction No. 76 issued by the Joint Bipartite Committee for the Coal Instructions, Coal India Limited, Annexure-A(ii) dealing with non-matriculates but educated, reads as follows:

In the case of appointees, who have pursued studies in recognized educational institution, the date of birth recorded in the School Leaving Certificate, shall be treated as correct date and the same will not be altered under any circumstances.

8. Therefore, the petitioner emphasizes that when the date of birth recorded in the School Leaving Certificate is available, the respondents have to take the same into consideration and shall not resort to take other methods for determining the age/date of birth of the petitioner. Therefore, the petitioner filed the present writ petition seeking to declare the action of the respondents in determining his age as completed 47 years as on 25.08.2001 as contrary to the SSC Transfer Certificate as well as the Circular dated 01.08.1988 and Bipartite Agreement dated 25.04.1988 with Annexure-I and thereby retiring the petitioner on 31.08.2014 instead of 30.06.2022 as illegal, arbitrary and consequently to direct the respondents to continue the petitioner in service under the same terms and conditions considering his date of birth as 25.06.1962 which is mentioned in the School Leaving Certificate.

9. Apart from controverting the material averments in the writ petition, the respondents contended in their counter affidavit as follows:

The petitioner was appointed initially in the Company on 01.01.1983 but not on 19.11.1982 as contended by him. The age of the petitioner was assessed and recorded as 29 years as on 19.11.1982 by the Medical Authorities during the medical examination as per the procedure in vogue. The very same age has been recorded in different Company records, such as Service Book, B-Register, CMPF nomination Form-A, Pension Form PS-3 and PS-4 and in Employee Personal Record.

10. The fact that the petitioner produced the Transfer Certificate at the time of his initial appointment has been denied and it is contended that the petitioner did not produce any record showing his date of birth at the time of his initial appointment. He was inducted into service considering him to be an illiterate and therefore he was sent for medical examination for determination of his date of

birth as per the procedure followed by the company. It is admitted that the petitioner made a representation to the Company for correction of his date of birth in the year 1999.

11. It is submitted by the respondents that as per the request made by the petitioner, the case was referred to the Age Determination Committee and the Apex Medical Board assessed the age of the petitioner as 47 years as on 25.08.2001 after going through all the records available in the material submitted by the petitioner and also upon considering the different medical reports and in accordance with the requirements of the medical jurisprudence. It is further submitted that the petitioner satisfied with the proceedings and accepted the age assessed by the Apex Medical Board as 47 years as on 25.08.2001.

12. The petitioner has affixed his signature in the service card and other concerned service records knowing fully about the entry of his age as 29 years as on 19.11.1982. After the assessment of the petitioners age by the Apex Medical Board, he was informed that his age was recorded as 47 years as on 25.08.2001 on considering his representation and the same was accepted by the petitioner and he signed on the report. The very same age has been incorporated in the service records subsequently and accordingly the petitioner was issued superannuation notice intimating his retirement date as 31.08.2014. The version of the respondents is that the Apex Medical Board is not bound to record the date of birth mentioned in the Transfer Certificate of the petitioner and it would consider and the dispute relating to the date of birth basing on various factors such as date of birth recorded in the company records, the evidence adduced by the petitioner and the result of his medical examination etc. In the case of the petitioner also it is submitted by the respondents that his age was determined after his representation basing on his own statement, the records of service of the petitioner, by his appearance and also by medically examining him.

13. Thus, the substance of the contentions of the respondents is that the petitioner has not produced any documentary proof relating to his date of birth at the time of his initial appointment and therefore, his date of birth was determined considering him to be an illiterate by referring him to the medical examination. Subsequently, on his representation, a review of his date of birth took place as per Annexure-1B of the Instruction No. 76 of JBCCI and his age was determined as 47 years as on 25.08.2001. Having accepted the age after review by the Age Determination Committee, the petitioner is precluded from re-agitating the same issue by filing the present writ petition after a long time.

14. The contention of the petitioner is that on coming to know about the wrong entry relating to his date of birth in the service records of the company, he submitted representation dated 18.04.1999 to the respondent company to correct his date of birth. Thereafter, his case was referred to the Age Determination Committee, but the Age Determination Committee without considering the S.S.C. transfer certificate produced by him as piece of evidence

on his behalf and without following any procedure, arbitrarily determined his age as 47 years as on 27.05.2001. His specific case is that his name was sponsored by employment exchange for appointment as badli worker, the recruiting officials very well knew about the date of birth mentioned in the transfer certificate and in a routine manner just as in case of other employees, they erroneously recorded the date of birth of the petitioner as 19.11.1982 considering him to be illiterate. Against the decision of the age determination committee that his age as 47 years as on 25.08.2001, he filed the present writ petition seeking mandamus on the ground that the decision of the Age Determination Committee is contrary to the circular, dated 01.08.1988 and Bipartite Agreement, dated 25.04.1988.

15. On the other hand, it is the contention of the respondents that the petitioner having accepted the decision of the Apex Medical Board determining his age as 47 years as on 25.08.2001 which has been done going through all the records available and also the material submitted by the petitioner, the petitioner having accepted the proceedings issued by the Apex Medical Board assessing his age, is precluded from re-agitating the said issue by filing writ petition.

16. Reliance is placed by the learned counsel appearing for the respondents on G.M. Bharat Coking Coal Ltd. West Bengal V. Shib Kumar Dushad And Others wherein the Supreme Court took the view that where question regarding correctness of date of birth as entered in service record raised by employee long after his joining the service and the employer decided the question following the procedure prescribed by statute, statutory rules or instructions, in the absence of any arithmetical or typographical error apparent on the face of the record, High Court should not interfere with such decision of the employer in exercise of its extraordinary jurisdiction under Article 226.

17. However, in the instant case, the petitioner raised the issue relating to the date of birth, soon-after he came to know about the wrong entry in the service records and on his application, his case was referred to the Apex Medical Board which rendered a decision and the said decision is challenged by the petitioner in the present writ petition on the aforementioned grounds. Therefore, in the strict sense, the judgment relied on by the learned counsel appearing for the respondents cannot be made applicable to the facts of the instant case. In this context, it should be relevant to refer to the following judgments relied on by the learned counsel appearing for the petitioner:

i) Iswarlal Mohanlal Thakkar Vs. Paschim Gujarat VIJ Company Limited And Another wherein the Supreme Court held that the fact that the appellant earlier signed his service records would not estop him from subsequently applying for correction of his date of birth when respondent issued a circular in that regard.

ii) Mohd. Yunus Khan V. U.P. Power Corporation Limited And Others wherein it was held that when no material has been placed in regard to existence of a statutory rule fixing a time-frame for filing an application for correction of the date of birth in the service record, and when the respondents (employers) had

not shown that the mistake in the matter of recording of date of birth in the service record was known to the appellant at any earlier point of time, the appellant is justified in filing the representation immediately after he came to know the mistake and even if there is a provision fixing a time frame for filing the application for correction of date of birth, it would not be of much significance.

iii) Secretary And Commissioner, Home Department And Others V.R. Kirubakaran the Supreme Court was of the view that in the absence of any rule fixing time limit for making an application for correction of date of birth, it should be made within a reasonable time.

18. In view of the judgments relied on by the learned counsel appearing for the petitioner, therefore it is obvious that the petitioners plea for correction of date of birth cannot be rejected on the ground that he made a representation for correction of date of birth at a belated stage.

19. From the facts of the case, it is clear that the petitioner soon-after coming to know about the incorrect recording of date of birth made a representation for correcting the same, and the respondents acted upon the representation and referred his case to the Apex Medical Board for its decision. The petitioner challenged the decision of the Apex Medical Board in the present writ petition and therefore, it also cannot be said that since basing on the representation, the Apex Medical Board reviewed the case of the petitioner as to his date of birth which became final and therefore, it cannot be re-agitated. Even the petitioner continued in service after the decision of the Apex Medical Board reviewing his date of birth without opposing the same immediately, he is not precluded from raising the issue in the present writ petition on the ground that the decision of the Apex Medical Board is arbitrary and illegal and without considering the S.S.C. transfer certificate produced by him for correction of date of birth.

20. The issue identical to the one involved in the present case was referred to the Full Bench of Jharkhand High Court and the Full Bench in Kamta Pandey v. B.C.C.L. held as follows:

In these decisions, though it is observed that the employee will not normally be permitted to apply for change of his date of birth at the fag end of his service career, the Supreme Court clearly held that if the Court is fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed and when a clear case, relating to the date of birth, is made out on the basis of cinching materials, then necessary direction to make a declaration of the said date of birth can be given.

21. Turning to the facts of the present case, there is no specific denial by the respondents to the assertion made by the petitioner that his name was sponsored by the employment exchange for appointment in the respondents company as badli worker. If that is so, the particulars of the petitioner must have

been forwarded by the employment exchange to the respondents company. Therefore, there is no point in recording the date of birth by the officials of the respondents company considering the petitioner as an illiterate. The S.S.C. transfer certificate is an authenticated document and it cannot be said that the petitioner obtained the said document after joining his service in the respondents company. When the transfer certificate relied on by the petitioner was not obtained by him after his joining service and the petitioner raised the issue of correction of his date of birth at appropriate time, the Apex Medical Board which reviewed the issue of date of birth of the petitioner ought to have taken into consideration the date of birth mentioned in the S.S.C. transfer certificate produced by the petitioner. It is obligatory on the part of the Apex Medical Board to pronounce upon the validity of the transfer certificate produced by the petitioner. But, the Apex Medical Board merely rendered a decision fixing his age as 47 years as on 25.07.2001, no reasons have been assigned by the Apex Medical Board as to how it arrived at the age of the petitioner as such. The Apex Medical Board ought to have assigned sufficient reasons as to why it discarded the S.S.C. transfer certificate produced by the petitioner and what are the materials based on which it had determined his age apart from the medical examination of the petitioner which was said to have been conducted. Learned single Judge of this Court in *B. Komaraiah V. The Singareni Collieries Co. Ltd.* And Another took the view that the transfer certificate issued by the government institution is *prima facie* evidence of its contents and in the absence of evidence of fraud or tampering or otherwise it being undependable, respondents are bound to consider the same as authentic document indicating date of birth of the person in whose favour it was issued.

22. In the present case, as already said, the respondents have not assigned any reason as to why they did not take the S.S.C. transfer certificate produced by the petitioner into consideration. Apparently it was also not the case of the respondents that the document was fraudulently obtained by the petitioner or it was tampered with or it was undependable. Though normally this Court would not interfere with the decision of the employer as to the question of date of birth which relates to disputed question of fact in exercise of jurisdiction under Article 226, it cannot be said that under no circumstances this Court will not exercise its power of judicial review.

23. In the instant case, the petitioner is able to place on record the fact that the decision rendered by the respondents as to his date of birth is based on the Apex Medical Boards determination which was the date of birth of the petitioner done in a mechanical and unilateral way without considering the materials relied on by the petitioner. Therefore, this Court in a case of this nature would exercise its jurisdiction under Article 226 to issue direction to the respondents to make the declaration of the date of birth of the petitioner by reviewing its decision which had already been made.

24. The respondents are therefore directed to consider the claim of the petitioner

for correction of the date of birth on the basis of the transfer certificate produced by him. The respondents shall consider the authenticity and validity of the transfer certificate produced by the petitioner to determine the date of birth within a period of three months and in the event of finding that the date of birth mentioned in the S.S.C. transfer certificate produced by the petitioner is correct, the respondents are further directed to reinstate the petitioner into service with full back wages. The entire exercise shall be done within a period of three months from the date of receipt of a copy of this order.

25. The writ petition is accordingly disposed of. There shall be no order as to costs. Pending miscellaneous petitions, if any, shall stand closed in consequence.