
(2013) 10 RAJ CK 0030

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 837 of 2013

Smt. Rajbala

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 17-10-2013

Acts Referred:

Citation : (2014) 1 WLN 437

Hon'ble Judges : Pratap Krishna Lohra, J;Dinesh Maheshwari, J

Bench : Division Bench

Advocate : M.L. Rajpurohit, for the Appellant; Pratistha Dave, for the Respondent

Final Decision : Partly Allowed

Judgement

Dinesh Maheshwari, J.—With the consent and at the request of the learned counsel for the parties, the matter has been heard finally at this stage itself. The petitioner-appellant, said to have been appointed on compassionate grounds on the post of Safai Karamchari on 12.12.1994 after demise of her husband, has filed the writ petition (CWP No. 9709/2013) stating the grievance that though for illiteracy, her date of birth came to be mentioned in the service record as "25.09.1953" but, her correct date of birth was "13.04.1966"; and even the Medical Board found her age between 35 to 40 years in the year 2006 but the respondents did not carry out the necessary correction in the service record despite representation and were seeking to retire her from service, while taking her date of birth as 25.09.1953.

2. The learned Single judge of this Court issued notices in the said writ petition on 02.09.2013 but rejected the prayer for interim relief. Hence, the petitioner-appellant has filed this intra-Court appeal.

3. At the motion-stage, in response to the queries of the Court, the petitioner-appellant has placed on record a copy of the certificate issued by the Executive Officer, Municipal Board, Kesrisinghpur, verifying the fact that her husband died while in service on 16.09.1994 and his date of birth, according to the service

record, was 01.11.1960.

4. Considering the submissions so made, notices for final disposal were ordered to be issued in this appeal returnable for this date and by way of interim order, the operation and effect of the order dt. 04.04.2013 impugned in the writ petition was ordered to be remain stayed while making it clear that it shall remain an interim arrangement only and shall not confer any additional right in the appellant.

5. The learned counsel for the appellant has reiterated the submissions, as noticed hereinabove, and has particularly submitted that when the date of birth of the husband of the appellant was recorded as 01.11.1960 and the Medical Board found the age of the petitioner-appellant between 35 to 40 years in the year 2006, prima facie, it were not a case where the appellant's date of birth as mentioned in the service record be taken as final and conclusive.

6. The learned counsel for the respondents, on the other hand, has duly supported the order impugned and has, inter alia, submitted that the facts concerning date of birth of the husband of the appellant were never placed for consideration before the learned Single Judge.

7. Though the matter essentially relates to grant of interim of relief, which is primarily of the discretion of the learned Single Judge dealing with the writ petition; and, ordinarily, we have reluctance in considering interference in the orders granting or refusing interim relief but the present one appears to be a case where, in our opinion, the prayer for interim relief as made by the petitioner-appellant deserves re-consideration by the learned Single Judge.

8. As noticed, the date of birth of the husband of the petitioner-appellant, who died while in service, had been 01.11.1960 and this fact is clearly stated in the certificate issued by the Executive Officer of the respondent Municipal Board. Then, the Medical Board, which was constituted with reference to the representation of the petitioner-appellant and at the requisition of the Executive Officer of the respondent Municipal Board, after due examination, opined in the year 2006 that the age of the petitioner-appellant was between 35-40 years.

9. Prima facie, we are of the view that whatever provision is reasonably made for the process of inference on the age of the appellant, on the facts as noticed about (i) the date of birth of the appellant's husband; and (ii) the Medical Board's opinion regarding the age of the appellant, it does appear requiring reconsideration if the entry regarding the date of birth of the appellant in her service record as "25.09.1953" be taken as final, conclusive and binding on her and thereby, she be taken to be of 60 years in the month of September 2013. The facts also remain that the appellant is a low-paid employee working on the post of Safai Karamchari, who got the appointment on compassionate basis upon the demise of her husband and is not of the status beyond that of a semi-literate person.

10. With reference to all the aspects noticed hereinabove, we are of the view that the prayer for interim relief as made by the petitioner in the writ petition deserves reconsideration by the learned Single Judge.

11. When it is pointed out that the certificate regarding the date of birth of the appellant's husband was not placed before the learned Single Judge, we are of the view that in the interest of justice, the petitioner-appellant be permitted to place the same on the record of the writ petition for appropriate consideration.

12. Accordingly and with the observations foregoing, this appeal is allowed only to the extent that while the part of the order impugned insofar it relates to the rejection of stay application, is set aside; and the stay application moved with the writ petition is restored for reconsideration by the learned Single Judge. In the interest of justice, the interim order dt. 27.09.2013 as passed in this appeal is extended to remain in operation until final disposal of the stay application by the learned Single Judge. No costs.