

HIGH COURT FOR THE STATE OF TELANGANA

WRIT PETITION No.9556 of 2016

A. Yadagiri S/o.Mallaiah
Aged: about 56 years, Occ: Driver (Retd)
E.No.252539, R/o.Nagasanpally village,
Papannapet Mandal, Medak District

....Petitioner

VERSUS

Telangana State Road Transport Corporation,
Rep. by its Managing Director,
Bus Bhavan, Musheerabad, Hyderabad
and another.

... Respondents

DATE OF JUDGMENT PRONOUNCED: 17.10.2023

THE HONOURABLE SRI JUSTICE J. SREENIVAS RAO

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| 1. | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. | Whether the copies of judgment may be marked to Law Reporters/Journals? | Yes/No |
| 3. | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

J. SREENIVAS RAO, J

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! Counsel for Petitioner : Mr.V.Narasimha goud

^ Counsel for Respondents :

< GIST:

> HEAD NOTE:

? CITATIONS:

1. 2015 (6) ALD 626
2. 2004 (3) ALD 251
3. 2016 (1) ALD 278

HON'BLE SRI JUSTICE J. SREENIVAS RAO

WRIT PETITION No.9556 OF 2016

ORDER:

This writ petition is filed seeking for writ of Mandamus to declare the Office Order No.P1/255(10)/2011-Medak dated 17.02.2016 issued by respondent No.2 retiring the petitioner from service prematurely with retrospective effect from 30.11.2015, as illegal, arbitrary, without jurisdiction and violative of principles of natural justice.

2. Heard Sri V.Narasimha Goud, learned counsel for the petitioner, and Sri A.Srinivas Reddy, learned standing counsel appearing for the respondent Corporation.

3. Learned counsel for the petitioner submits that the petitioner was appointed as a driver in respondent Corporation *vide* office order No.P3/502(3)/87-SRD dated 06.04.1988, issued by the Divisional Manager, Medak District at Sanga Reddy, and subsequently his services were regularized. At the time of appointment, the petitioner produced bonafide certificate issued by the ZPHS, Nagasanpally, wherein his date of birth is mentioned as 15.04.1959. The respondent Corporation accepted the said date of birth and the same was recorded in the appointment order and also in the service record and the petitioner is supposed to be retired from service on 30.04.2017.

3.1. He further submits that when the petitioner performing duties at Dubbak Depot, the Depot Manager, Dubbaka Depot, issued letter dated 16.11.2004 directing the petitioner to submit Birth Certificate issued by the Mandal Revenue Officer (MRO) or school certificate. Pursuant to the same, he produced the bonafide certificate issued by the ZPHS, Nagasanpally, dated 18.11.2004, wherein his date of birth is mentioned as 15.04.1959. Thereafter, the petitioner was transferred to Medak Depot. On 16.04.2011, respondent No.2 again issued another letter directing the petitioner to submit school certificate to show his date of birth as 15.04.1959. Pursuant to the same, petitioner obtained the date of birth certificate from ZPHS, Nagasanpally and produced the same. Even after furnishing the date of birth certificate twice, once again respondent No.2 directed the petitioner to submit fresh certificate from School. The petitioner once again obtained bonafide certificate from ZPHS, Nagasanpally on 18.01.2016 and the same was submitted to respondent No.2 along with detailed representation on 22.01.2016. The respondent Corporation, without considering the same and without issuing any notice, opportunity to the petitioner, retired him from services through impugned order dated 17.02.2016 prematurely on the alleged ground that in the medical certificate dated 20.11.1987 issued by the Medical Officer, APSRTC, Tarnaka Hospital, the age of the

petitioner was mentioned as 30 years as on 20.11.1987 and basing on the said certificate the petitioner deemed to have been retired from service from the respondent Corporation with effect from 30.11.2015 on attaining the age of superannuation as per the TSRTC Employees (Service) Regulations 1964 (hereinafter called, 'Regulations' for brevity).

3.2. Learned counsel vehemently contended that the date of birth of the petitioner was recorded in the appointment order dated 06.04.1988 as well as in the service records as 15.04.1959. Further, the petitioner submitted bonafide certificate issued by the ZPHS, Nagasanpally, on various occasions and also date of birth certificate issued by the Sarpanch, Nagasanpally Gram Panchayat, wherein the date of birth of the petitioner is mentioned as 15.04.1959. Hence, the respondent Corporation is not entitled to retire the petitioner from service prematurely basing upon medical certificate dated 20.11.1987 issued by the Medical Officer, especially raising such age dispute after rendering more than 28 years of service and at the fag end of the service. He further contended that the Medical Officer issued medical certificate for limited purpose determining the medical fitness of the petitioner that whether he is entitled to hold the post of driver or not. Basing on the said certificate, the respondent Corporation is not entitled to

pass impugned order. The respondent Corporation, without issuing any notice and without conducting any enquiry, issued the impugned order dated 17.02.2016 solely basing upon the medical certificate dated 20.11.1987 issued by the medical officer and the same is contrary to law.

3.3. In support of his contention, he relied upon the unreported judgment dated 30.12.2009 passed in W.P.No.16974 of 2009 and the judgment of this Court in W.A.No.1053 of 2011 dated 26.12.2011. He also relied upon the following judgments:

1. **R. Sudhakar v. APSRTC and others**¹ and
2. **P.Pochamma vs. Principal Secretary, Technical Education, Govt. of A.P. and others**²,

4. Per contra, learned standing counsel for the respondent Corporation submits that the petitioner has not produced any certificates of age proof at the time of appointment, therefore, he was referred to medical examination. The Medical Officer, APSRTC, Tarnaka Hospital, conducted medical examination as per Regulations and issued medical certificate, wherein the age of the petitioner was determined as 30 years as on 20.11.1987. The respondent Corporation has given several opportunities to the petitioner to produce his date of birth certificate. Petitioner

¹ 2015 (6) ALD 626

² 2004 (3) ALD 251

submitted certificate issued by the Sarpanch, Gram Panchayat Nagasanpally and the said document does not contain any date.

4.1. He further contended that the petitioner submitted representation on 22.01.2016 by enclosing copy of the bonafide certificate issued by ZPHS, Nagsanpally, dated 18.01.2016. Pursuant to the same, the respondent Corporation deputed concerned officer to verify the genuinity of said certificate produced by the petitioner. After due verification of the records from the ZPHS, Nagasanpally, the said officer submitted a report to respondent No.2 dated 25.01.2016 stating that the date of birth mentioned in the bonafide certificate is not genuine one. He further contended that the respondent Corporation, after following the due procedure as contemplated under Regulations, rightly retired the petitioner from service with effect from 30.11.2015 by issuing the impugned order dated 17.02.2016 and the petitioner is not entitled to raise dispute at the fag end of service and the same is not permissible under law.

4.2. In support of his contention, he relied upon the judgment in **P.Manikya Rao v. A.P. State Road Transport Corporation and others³** and unreported judgment dated 06.02.2023 passed in W.P.No.19266 of 2019 in **A. Yadaiah v. The Telangana State**

³ 2016 (1) ALD 278

Road Transport Corporation.

5. Having considered the rival submissions made by the respective parties and after perusal of the material available on record, it reveals that the petitioner was appointed as a casual driver in the respondent Corporation *vide* office order dated 06.04.1988, later on his service was regularized with effect from 01.09.1988. In the appointment order, the date of birth of the petitioner was mentioned as 15.04.1959 and the respondent Corporation opened the service register of the petitioner on 24.09.1998, wherein the date of birth of the petitioner was mentioned as 15.04.1959 and the same is continued till issuance of the impugned order.

6. When the petitioner discharging his duties in Dubbak Depot, the Depot Manager had issued notice dated 16.11.2004 directing the petitioner to produce the date of birth certificate issued by the MRO or school certificate within seven days. Pursuant to the same, petitioner produced the certificate issued by the Head Master, ZPHS, Nagasanpally, Papannapet Mandal, Medak District, dated 18.11.2004, wherein it was mentioned that the petitioner was studied from class I to V during the years 1966-67 to 1973-74 and as per the school admission records, his date of birth is 15.04.1959.

6.1. It further appears from the records that when the petitioner discharging his duties at Medak Depot, respondent No.2 issued another notice on 16.04.2011 directing the petitioner to submit date of birth certificate issued by MRO or school certificate. Petitioner pleaded in the affidavit that he produced bonafide certificate issued by the school. Once again the petitioner submitted bonafide certificate dated 18.01.2016 issued by ZPHS, Nagasanpally to respondent No.2 along with a detailed representation, dated 22.01.2016, wherein he stated that at the time of submission of application to the post of driver, in application form, the petitioner mentioned his date of birth as 15.04.1959 and all other particulars and the respondent Corporation after due verification and after following the procedure, issued appointment order, wherein his date of birth is mentioned as 15.04.1959 and in service records also the very same date of birth is mentioned. Respondent No.2, without conducting any enquiry and without issuing any notice, straightaway issued the impugned office order dated 17.02.2016 retiring the petitioner from service w.e.f. 30.11.2015 solely basing upon the Medical Certificate dated 20.11.1987.

7. It is very much relevant to mention here that the petitioner was appointed on 06.04.1988 and his date of birth is recorded in

the appointment order as well as service records of the petitioner as 15.04.1959 and he discharged more than 28 years of service and during the said period, respondent Corporation had not initiated any proceedings, conducted any enquiry nor passed any order against the petitioner, even after submission of the certificates issued by the concerned school and Gram Panchayath by the petitioner in the year 2004, 2011 and 2016.

8. It is settled principle of law that the employee is not entitled to raise the age dispute nor seek correction of the date of birth at the fag end of the service. The said principle is also applicable to the employer. It is already stated supra that the respondent Corporation, without conducting any enquiry, without issuing any notice and opportunity to the petitioner, straight away issued the impugned order dated 17.02.2016 retiring the petitioner from service w.e.f. 30.11.2015 and the same is clear violation of principles of natural justice and offend Article 14 of the Constitution of India.

9. In W.P.No.16974 of 2009, this Court while allowing the writ petition held that:

The fact that the petitioner in the instant case could not furnish proof of his date of birth is not in dispute. However, it is the case of the petitioner that there was no assessment of his age by the Medical Officer of the Corporation and his date of birth was recorded in the Service Record as

10.11.1952. The fact that the petitioner's date of birth was recorded in the service record as 10.11.1952 at the time of his appointment and that the same remained as such even till today could not be disputed by the Corporation. However, the Corporation placed strong reliance upon a Medical Certificate found in the Service Record of the petitioner.

In the circumstances, the stand taken by the respondents in the impugned order dated 03.08.2009 that the petitioner shall be deemed to have retired from service from 31.12.2007 cannot be accepted.

10. The Division Bench of this Court in W.A.No.1053 of 2011 dated 26.12.2011 held that:

The fact that the respondent-writ petitioner's date of birth was recorded in the Service Record as 10.11.1952 at the time of his appointment and that the same remained as such even till today could not be disputed by the appellant-Corporation. A perusal of the Medical Certificate found in the Service Record of the respondent-writ petitioner, it is clear that it was nothing but a certificate of fitness for appointment. Respondent-writ petitioner's age was entered in the service record as 10.11.1952 but not as 30 years as on the date of appointment as claimed by the appellant-Corporation. The learned Single Judge has rightly held that the impugned action of the Corporation in retiring the respondent-writ petitioner with effect from 31.12.2007 undoubtedly amounts to altering the date of birth entered in the service record without notice to the respondent-writ petitioner.

11. In R.Sudhakar (1 supra), while deciding the issue of premature retirement basing on the medical examination, this Court held as follows:

10. Even if there is no documentary evidence relating to the date of birth of the petitioner at the time of his initial appointment, the normal course of

the respondents is to refer the petitioner for medical examination for the purpose of determination of his age. Learned standing counsel for the respondents-Corporation contended that as the petitioner failed to produce any proof in respect of his age, he was referred to the Medical Officer, who tested and assessed the age of the petitioner as 30 years. But according to the petitioner, at the time of regularisation of the service, he was referred to the Medical Officer for examination whether he was fit for appointment as Mazdoor or not and the Chief Medical Officer after examining the petitioner issued a certificate on 11.06.1986. In the said certificate, it is mentioned that the petitioner was referred by his name and his age was shown as 30 years. It is pertinent to note that in the certificate it is clearly stated that the form of certificate to be used when a candidate is medically examined for fitness for appointment. From the contents of the certificate, it cannot be said that the certificate relates to determination of age of the petitioner, but it only relates to determination of fitness of the petitioner for the post to which he was regularised. Merely because in the body of the certificate, the age of the petitioner was mentioned as 30 years, it cannot be said that the petitioner was aged about 30 years as on 11.06.1986 and this was so determined by the Medical Officer. Therefore, the contention of the learned standing counsel appearing for the respondents that under the aforesaid certificate, the petitioners age was determined by the Medical Officer, cannot be accepted.

12. In the above said cases, it was held that at the time of appointment of employee whatever the date of birth was recorded in the service records, the same were continued till the end of service of the employee and the employer has not raised any dispute nor initiated any proceedings disputing the date of birth of the employee. However, employer initiated proceedings disputing the date of birth of the employee at the fag end of service basing upon the certificate issued by the medical officer amounts to alteration of

date of birth and the same is not permissible.

13. In P.Pochamma case (2 supra), specically held that once date of birth entered in service register and accepted by parties same cannot be changed unilaterally without unimpeachable evidence and it is observed that:

6. The learned Single Judge considered the arguments of the parties and dismissed the writ petition. Law is settled that once a date of birth is entered in the service register and accepted by the parties i.e., the employer and the employee, it cannot be changed unilaterally without an unimpeachable evidence to show that the date of birth so entered in the service register is incorrect. That would contemplate that if an employer wants to change the recorded date of birth of an employee, he has to conduct an enquiry. When the case came up for hearing on the last occasion, we had requested the learned Counsel for the respondents to tell us as to whether any enquiry had been conducted and if so record be produced. He produced the record, but there is nothing on record and it has been conceded by the learned Counsel for the respondents that no enquiry has been conducted, but he would submit that asking the writ petitioner to submit herself to the forensic examination was an enquiry in itself. We cannot accept such an argument. We have seen the service register of the writ petitioner which shows that her date of birth is 16.5.1950 which has been endorsed by the officer who has entered it in the service register. It is also accepted in the counter-affidavit that a certificate issued by the Sarpanch, Gram Panchayat, Chinna Chinthakunta Village was produced by the petitioner at the time of her appointment. Obviously this certificate has been accepted as proof of the date of birth of the petitioner. Then in 1987 the petitioner was again referred to a doctor who certified her date of birth on the basis of her appearance and her statement. For four years from 1987 to 1993 the respondents did not do anything, but in 1993 they subjected the petitioner to forensic examination. We presume that the date of birth of the petitioner was recorded in her service register on the basis of certificate

issued by Sarpanch, Gram Panchayat, Chinna Chintakunta. That certificate was never challenged, no enquiry was conducted, therefore, in our view, the learned Single Judge was not right in dismissing the writ petition.

14. The contention raised by the learned standing counsel relying upon the judgment in Yadaiah's case (4 *supra*) and P.Manikya Rao (3 *supra*) that petitioner filed the writ petition at the fag end of service for seeking correction of date of birth is not tenable under law, on the sole ground that the petitioner has not raised any age dispute or sought correction of date of birth in the service records. The principle laid down in the above judgments is supporting the contention of the petitioner.

15. Therefore, the impugned order passed by respondent No.2 retiring the petitioner w.e.f. 30.11.2015 amounts to altering the date of birth of the petitioner, in the absence of notice, enquiry or any order, at the fag end of service solely basing upon medical certificate dated 20.11.1989 and the same is clear violation of principles of natural justice and contrary to the law.

16. For the foregoing reasons, the impugned order dated 17.02.2016 passed by respondent No.2 is liable to be set aside, accordingly, set aside and the respondents are directed to extend all the service benefits to the petitioner as per his entitlement, treating his date of birth as 15.04.1959, within a period of two (2)

months from the date of receipt of a copy of this order.

17. Accordingly, the writ petition is allowed, however, without costs.

Miscellaneous petitions, pending if any, shall stand closed.

J. SREENIVAS RAO, J

Date : 17.10.2023

L.R. Copy to be marked – Yes.
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