

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P. No. 6199 of 2019

Between:

M. Sanjeeva Reddy

... Petitioner

And

T.S.R.T.C. and others

... Respondents

JUDGMENT PRONOUNCED ON: 09.02.2023

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers may be allowed to see the Judgment? : yes
2. Whether the copies of judgment may be marked to Law Reporters/Journals? : yes
3. Whether Their Lordships wish to see the fair copy of the Judgment? : yes

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 6199 of 2019****% 09.02.2023****Between:**

M. Sanjeeva Reddy

... Petitioner

and

\$ T.S.R.T.C. and others

.....Respondents**< Gist:****> Head Note:**

! Counsel for the Petitioner : Sri V.Narsimha Goud

^Counsel for Respondents : Sri N.Praveen Reddy
Standing counsel for TSRTC**? Cases Referred:****1. (2003) 8 SCC 673****2. (2022) SCC Online TS 2820**

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P. No. 6199 of 2019

ORDER:

Heard the learned Counsel for the Petitioner and the learned Standing Counsel appearing on behalf of the Respondent.

2. The Petitioner filed this petition seeking Writ of Mandamus with prayer is as follows :

“declaring the impugned action of the respondents in correcting the petitioners date of birth as 15.03.1963 from 01.06.1968 in the petitioner service record as illegal arbitrary and in violation of Articles of 14 16 and 21 of Constitution of India and consequently direct the respondents to continue the petitioner in service till 30.06.2026 on which date the petitioner would be reaching the superannuation age of 58 years along with all consequential benefits in the interests of justice and fair play”.

3. The case of the petitioner, in brief, is as follows:

a) The petitioner had been selected as Driver in the 1st Respondent organisation and has been working as driver since 15.03.1991 and the services of the petitioner were regularised on 01.04.1994 but the number of working days in Suryapet,

Tandur and Ibrahimpatnam depots were considered thereby delaying the regularisation of the petitioner.

b) The petitioner's date of birth as borne in Transfer Certificate is 01.06.1968 and the same has been recorded in petitioner's service record and all other forms submitted, which were certified by the concerned officer. Even the Employment Card registered vide registration no. R1/88715691, the date of birth of the petitioner is recorded as 01.06.1968.

c) Without any notice or without any valid reasons, the date of birth of the petitioner has been changed from 01.06.1968 to 15.03.1963 in the P.F. Slips issued for the year 2017-2018 and hence the petitioner made a representation to the 2nd respondent requesting to correct the date of birth as 01.06.1968 but to no avail.

d) The Petitioner then made a representation to the 3rd respondent dated 27.07.2018 under the Right to Information Act but no reply had been received and hence the Petitioner made another representation on 06.12.2018 and the 3rd

respondent furnished a reply through his letter dated 10.12.2018.

e) Apart from the letter and other documents, Service record has also been furnished and upon perusal, petitioner has observed that the date of birth of the petitioner has been changed from 01.06.1968 to 15.03.1963 by following the Medical Certificate dtd15.03.1991. The Medical Officer has examined the petitioner in respect of physical fitness and not in respect of age proof as per the records in Service Certificate.

f) The Respondents, having accepted the petitioner's date of birth as 01.06.1968 without any dispute for more than 25 years and changing the same without any intimation is illegal and without jurisdiction. The competent authority overseeing such changes is the 1st respondent and the Service record submitted by the respondents changing the date of birth of the petitioner has not been signed by the competent authority (i.e., 1st respondent herein). 1st respondent has been employing such illegal and unfair labour methods to terminate/eliminate senior employees like the petitioner, so as to avoid paying of salaries.

g) Since there was no reply to the representation dated 30.05.2018 of the petitioner by the 2nd respondent, petitioner got issued a notice through advocate dated 11.01.2019 bringing all the above facts and requesting to continue the petitioner till the petitioner had reached the age of superannuation i.e., 30.06.2026, for which there was no reply from the respondents and if the same is not considered, the petitioner would be retired five years earlier than the original service. Hence, the Writ Petition is filed.

4. Counter Affidavit filed by the Respondents, paras No.5, 7 and 9 read as under :

"5. With regard to the averments made in Para-4 to 7 of the affidavit, it is submitted that at time of submission of application for the post of Drivers the Petitioner did not submit any educational qualification. It is specifically denied that the Petitioner submitted his Transfer Certificate vide P115691/88 to support his case in respect of date of birth. In the absence of any evidence to support the date of birth of the Petitioner, the Respondent Corporation subjected the Petitioner for medical examination to determine his age. It is further submitted that as per the Medical Certificate No. 32386, dated 15.03.1991 the RTC Officer assessed the age of

the Petitioner as 28 years as on 15.03.1991. As per Regulation 19 of the APSRTC Employees (Service), Regulations, 1963 and according to the Medical Certificate, the date of birth of the Petitioner was fixed as 15.03.1963. The Petitioner's appointment order dated 12.08.1991 shown the date of birth of the Petitioner as 15.03.1963 but not 01.06.1968 as stated by the petitioner."

7. It is submitted that in Order dated 12.08.1991 regarding the recruitment, the Petitioner's Date of Birth has been noted as 15.03.1963 for which he never raised any objection at any point of time. It is also pertinent to mention here that in the Driving License issued by the Telangana State, the Date of birth was recorded as 15.03.1963 as well. In the event of the Petitioner claiming that his date of birth should be recorded as 01.06.1968, the Petitioner will be ineligible to hold license for driving Transport Vehicle in the year 1986 as his age would be only 18 years which is 2 years less than the required age of 20 years for holding license for driving transport vehicle. Even as per Section 4(2) of the Motor Vehicle Act, 1988, which states that "Subject to the provisions of section 18, no person under the age of twenty years shall drive a transport vehicle in any public place".

9. It is submitted that the date of birth of the petitioner as per service record is 15.03.201963 and that was never changed by the respondent corporation.

Therefore the petitioner is due to retire on 31.03.2023 on attaining age of superannuation as per his date of birth as 15.03.201963. The petitioner cannot file a writ petition at the fag end of his service to claim that his date of birth is incorrectly recorded and seek correction of his date of birth after lapse of more than 28 years."

PERUSED THE RECORD :

DISCUSSION & CONCLUSION :

5. The specific averments of the Petitioner, in particular, Para 4 read as under :

"4. I further submit that I have submitted an application for the post of Driver as per the Notification issued by the respondent duly furnishing my date of birth as 01-06-1968, which is also borne in the Transfer Certificate vide P115691/88. Accordingly, the above date of birth has been recorded in my service record and also in all nomination forms submitted in respect of SBT, SRBS, Employee's Provident Fund Trust and CCA etc. The same was certified by my Unit Officers in the above forms including Life Insurance Policy vide Policy No.642161175 which is based on the deduction from the salary every month. In my Employment Card registered vide Registration No.R1/88715691 dated 04-11-1988 with the Ranga Reddy District Employment Exchange Office. Wherein, my date of birth was recorded on 01.06.1968. All of suddenly my date of

birth has been changed from 01-06- 1968 to 15-03-1963 without any notice and without any valid basis. The above correction was found in P.F slip issued for the year 2017-18. Hence I made a representation dated 30-05-2018 to the 2 respondent requesting to correct my date of birth as 01-06-1968 as my date of birth is being supported with valid documents. However, he has not passed any orders. Hence, it amounts to arbitrary.

6. The specific case of the Petitioner is that the Petitioner submitted an application for the post of Driver as per the Notification issued by the Respondent duly furnishing Petitioner's date of birth as 01.06.1968 which is also borne in the Transfer Certificate vide P115691/88 and accordingly the Petitioner's date of birth had been recorded in all the Service Records of the Petitioner. But in the year 2017-18 the Petitioner was shocked to know that his date of birth was changed from 01.06.1968 to 15.03.1963 without any notice and without any valid basis.

7. The specific stand of the Respondents on the other hand the date of the Petitioner as per the Service Record is 15.03.1963 and it was never changed by the

Respondent Corporation and further when the Petitioner is due to retire on 31.03.2023 on attaining the age of superannuation as per his date of birth as 15.03.1963, the Petitioner approached the Court at the fag end of his service to claim that his date of birth is incorrectly recorded and seeks correction of his date of birth after a lapse of more than 28 years and therefore the Writ Petition needs to be dismissed.

8. A bare perusal of the material document at Page 24 filed in support of the Writ Petition which pertains to the personal data of the Petitioner as per Service Record clearly indicates that the Petitioner's date of as 01.06.1968 being rounded off and another date as 15.03.1963 as incorporated in the Service Register with the following endorsement :

"Verified, as per MC. P.No.14, 15.03.1963 by rounding the 01.06.1968, MC.No.32386, dated 15.03.1991".

9. On perusal of the original records by this Court it is evident that there is no any notice issued to the Petitioner prior to the correction of the date of birth in

the Service Records from 01.06.1968 to 15.03.1963 and to the query of this Court addressed to the learned Standing Counsel for the Respondents whether any notice has been issued to the Petitioner prior to carrying out the said correction, the learned Standing Counsel fairly submits that no notice has been issued to the Petitioner prior to the said correction of date of birth in the Service Records.

10. A bare perusal of the material documents filed by the Petitioner in support of the Writ Petition clearly indicates that the petitioner sought certain documents vide his application under the RTI Act dt. 06.12.2018 and the Petitioner was furnished with the following documents as per his request and in response to the said application of the petitioner the Public Information Officer and Depot Manager vide his Letter No. DS(P)/5(18)/2016-HYT-2, DT. 10.12.2018, replied as follows :

With reference to the above cited, it is to inform that, the following information is furnished here under.

- (a) A copy of your Bio-Data application form submitted at the time of joining in the service as Driver is enclosed herewith.
- (b) Form No.A & B is not available.
- (c) A copy of PF Nomination submitted while your appointment is enclosed herewith.
- (d) A copy SRBS Nomination submitted while your appointment is enclosed.
- (e) A copy of SBT Nomination submitted while your appointment is enclosed.
- (f) CCS Nomination forms of all employees will record and maintain at CCS office only. Hence your CCS nomination is not available.
- (g) A copy of driving license submitted while your appointment is enclosed herewith.

This is for your information.

11. A bare perusal of the documents (c), (d), (e) and (g) referred to above clearly indicate that the date of birth at the time of Petitioner's appointment as referred to in the letter dt. 10.12.2018 of the Public Information Officer & Depot Manager, Hayathnagar-2 Depot, clearly indicates that the date of birth of the Petitioner as 01.06.1968 and therefore the plea of the Respondent Corporation at para 5 of the Counter Affidavit filed by the Respondents that the Petitioner was subjected to

medical examination to determine the Petitioner's age in the absence of any evidence to support the date of birth of the Petitioner and as per the Medical Certificate No.32386, dt. 15.03.1991 the RTC Officer assessed the age of the Petitioner as 28 years as on 15.03.1991 is not tenable. It is further stated at para 6 & 7 of the Counter Affidavit that the Petitioner was referred to RTC Medical Officer for age determination as per Regulation 19 of the APSRTC Employees (Service) Regulation 1963. A bare perusal of the Medical Certificate dt. 15.03.1991 of the RTC Officer clearly indicates that it is nothing but Certificate of Fitness for appointment and it only certifies the Petitioner as considered fit for appointment by the concerned Civil Surgeon/Medical Officer. A bare perusal of the original records also does not indicate any assessment of the Petitioner's age by the Medical officer before issuing the said certificate.

12. This Court opines that the action of the Respondents is lacking in authority of law in the present case, in making an unilateral correction of date

of birth in the service record and admittedly without issuing notice to the Petitioner, without giving opportunity of hearing to the Petitioner. This Court opines that the Respondents herein are expected to act with certain element of responsibility in maintaining the service records of their workmen/ employees and ensure that there is uniformity in particulars concerning individual employees. But curiously however in the present case Respondents had failed in their duty in maintaining Petitioner's service record properly. The Medical Certificate dt. 15.03.1991 does not evidence any assessment of Petitioner's age by the Medical Officer before issuing the said certificate.

13. Under identical circumstances this Court in W.P.No. 16974/2009 dealing with the Medical Certificate observed as under :

"A reading of the above certificate makes it clear that it was nothing but certificate of fitness for appointment. Though the petitioner was described as aged 30 years, nothing could be placed before this Court by the Corporation to show that there was any assessment of the petitioner's age by the Medical Officer before issuing the said Certificate. It is also relevant to note that the 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 Corporation. Hence, the impugned action of the Corporation in retiring the petitioner w.e.f. 31.12.2007 undoubtedly amounts to altering the date of birth entered in the service record without notice to the petitioner.

14. The above said order of the Single Judge was confirmed by Division Bench of High Court in the APSRTC vs. S.B.Singh in W.A.No.1053/2011, dt. 26.12.2011 and the relevant portion reads as under :

“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.

Under the aforementioned circumstances, we are of the considered view that the reasoning assigned by the learned Single Judge is quite legal and justified and,

therefore, we do not find any reason to interfere with the impugned order passed by the learned Single Judge.

The Writ Appeal, therefore, fails and is accordingly dismissed upholding the impugned order of the learned Single Judge. No order as to costs."

15. The judgments relied upon by the Counsel for the Respondents in Sushil Kumar vs. Rakesh Kumar reported in (2003) 8 SCC 673 and the Judgement of the Apex Court reported in (2022) SCC Online TS2820 in K.Kumara Swamy vs. Regional Manager, APSRTC & Others do not have any relevance to the facts of the case for two reasons, firstly:

(i) In view of the simple fact that admittedly as borne on record the Petitioner did not receive any notice prior to the correction of Petitioner's date of birth from 01.06.1968 to 15.03.1963.

(ii) In view of the simple fact that admittedly as borne on record the Medical Certificate dt. 15.03.1991 issued by the APSRTC Hospital Medical Officer only certified the Petitioner as fit for appointment, but however admittedly even as per the original records and also the said Medical Certificate dated 15.03.1991 did not evidence any assessment of the

Petitioner's age by the Medical Officer before issuing the said certificate.

16. It is borne on record that the petitioner herein through his detailed legal notice dated 11.01.2019 addressed to the Respondents herein pointed out that the Petitioner's date of birth cannot be altered and requested Respondents to continue the Petitioner in the service based on the date of birth recorded earlier as 01.06.1968 instead of 15.03.1963.

17. Taking into consideration the above referred facts and circumstances and also the view taken by this Court earlier in its judgments/extracted above in respect to a medical certificate issued to an employee declaring him or her as fit and in view of the fact that the Petitioner is due to retire on 31.03.2023 on attaining age of superannuation as per his date of birth as 15.03.1963, the writ petition is allowed and the Respondents herein are directed to examine and consider the whole issue to continue the Petitioner in service treating the Petitioner's date of birth as 01.06.1968 as communicated to the Respondents

herein vide Petitioner's Legal Notice dated 11.01.2019 which has been acknowledged by the Respondents herein, in accordance to law, by giving due notice and opportunity to the Petitioner, in conformity with the principles of natural justice, within a period of (3) three weeks from the date of receipt of a copy of the order and pass appropriate orders, duly communicating the decision to the Petitioner. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand dismissed.

SUREPALLI NANDA, J

Date: 09.02.2023

Note: L.R. copy to be marked
b/o kvrm