

**THE HONOURABLE SMT JUSTICE P.MADHAVI DEVI**

**W.P.No. 31952 OF 2016**

**ORDER:**

This Writ Petition has been filed by the petitioner seeking a writ of mandamus declaring the impugned proceeding No. TR2/255(12)/2016-PO(E&S), dated 27.05.2016, Retirement notification No. P1/756(3)/16-NLG, dated 01.01.2016 and Retirement Order No. P1/756(1)/16-NLG, dated 30.06.2016, as illegal and arbitrary and to direct the respondents to reinstate the petitioner into service along with all consequential benefits which the petitioner would have earned had the petitioner not been prematurely retired from service on 31.03.2021.

2. The brief facts of the case leading to filing of the present writ petition are that the petitioner was appointed as a driver in the respondent's Corporation on 03.11.1988 after undergoing due process of selection.

The services of the petitioner were regularized with effect from 01.09.1989. At the time of entry into service, the date of birth of the petitioner was recorded as 01.11.1961. While so, the 4<sup>th</sup> respondent had issued notice dated 26.10.2015 asking the petitioner to submit the supporting documents in support of his date of birth. The petitioner had submitted his reply dated 07.06.2016 stating that his date of birth was recorded as 20.03.1963 in Transfer Certificate dated 26.03.1987 issued by the Principal Government Junior College, Vijaypuri Colony (North), Nagarjuna Sagar, Nalgonda District.

3. Thereafter, the 2<sup>nd</sup> respondent had passed the impugned order dated 27.05.2016, reckoning the date of birth of the petitioner as 22.06.1958, on the ground that when the petitioner was examined by the APSRTC Medical Officer on 22.06.1988, at the time of selection to the post of driver, his age was recorded as 30 years and therefore, the date of birth of the petitioner would be

22.06.1958. On the basis of the same, the petitioner was retired from service vide Order No.P1/756(1)/16-NLG, dated 30.06.2016. Challenging the same, the present Writ Petition is filed.

3. The learned counsel for the petitioner submitted that the actual date of birth of the petitioner is 20.03.1963 and the same is recorded in the Transfer Certificate and other nomination authorization forms and physical fitness certificate dated 22.06.1988, but they were not furnished with the attestation forms A & B at the time of appointment. It is admitted that in all the documents furnished by the petitioner at the time of appointment his date of birth was recorded as 01.11.1961 and therefore, the petitioner was supposed to continue in service till 30.11.2019 when he attained the age of 58 years. It is the grievance of the petitioner that the respondents, without giving any cogent reasons, have retired the petitioner from service prematurely with effect

from 30.06.2016 afternoon. Therefore, he seeks notional reinstatement of the petitioner and retirement of the petitioner after attaining the age of superannuation in the year 2019 and all the consequential attendant benefits. In support of his contention that his date of birth as recorded at the time of appointment should be considered. Learned counsel for the petitioner placed reliance upon the following judgments:

**(i) Shobha Ram Raturi Vs. Haryana Vidyut Prasaran Nigam Limited and Others<sup>1</sup>;**

**(ii) B.Mallaiah Vs. APSRTC, Hyderabad and Others<sup>2</sup>;**

**(iii) Writ Petition No.16974 of 2009, dated 30.12.2009;**

**(iv) Writ Appeal No.1053 of 2011, dated 26.12.2011;**

4. Learned Standing counsel for the respondent corporation, on the other hand, submitted that the petitioner, at the time of appointment had given a

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<sup>1</sup> (2016) 16 SCC 663

<sup>2</sup> 2011 (1) ALD 715

particular date of birth and subsequently had claimed date of birth to be different. He also submitted that the petitioner had played fraud on the respondents by claiming to be “uneducated person” whereas subsequently he has submitted the copy of transfer certificate issued by a School. Therefore according to him, there is fraud played by the petitioner on the respondent Corporation. He submitted that during the time of medical examination, at the time of entry into service, the petitioner himself has stated his age as 30 years, which is recorded by the medical officer and therefore, respondents have correctly adopted the age of the petitioner to be 30 years as on the date of entry into service and has accordingly retired the petitioner from service on his attaining the age of superannuation. He therefore, prayed for dismissal of the writ petition.

5. Having regard to the rival contentions and the material on record and also the precedents upon which

reliance has been placed by the learned counsel for the petitioner, it is noticed that the respondent organization is required to consider all the relevant certificates before issuing an appointment letter to an employee. In this case, the petitioner has given his date of birth as 01.11.1961 and the same is recorded in the official records of the petitioner. While that being the case, it is neither open to the petitioner nor to the respondents to change the date of birth at the fag end of service of the petitioner. This High Court in the case of **B.Mallaiah Vs. APSRTC Hyderabad and Others**<sup>3</sup>, has held that alteration of date of birth by employer in service records of the employee, when he is at verge of his retirement is not permissible. It was further held that just as the petitioner cannot seek alteration of his date of birth at the fag end of his service, the respondents also cannot alter it on the verge of his retirement, that too, without notice to him.

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<sup>3</sup> 2011 (1) ALD 715

6. In the case of **S.B.Singh vs. APSRTC**, in Writ Petition No.16974 of 2009, dated 30.12.2009, this Court has taken similar case of medical certificate into consideration and has held that such medical certificate is nothing but certificate of fitness for appointment and though the petitioner was described as aged 30 years therein, nothing could be placed before the 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. The Court has also taken cognizance of the fact that though the petitioner's age was mentioned as 30 years as on the date of appointment, but it was not the recorded date of birth as pointed out by the petitioner. Therefore, the Court held that the impugned action of respondent corporation in retiring the petitioner on the basis of medical certificate is arbitrary and illegal and hence, it was set aside. This Judgment has also been upheld by the Division Bench of

the Court in Writ Petition No.1053 of 2011. Further, the Hon'ble Supreme Court in the case of **Shobha Ram Raturi Vs. Haryana Vidyut Prasaran Nigam Limited and Others**<sup>4</sup> has held that

Having given our thoughtful consideration to the controversy, we are satisfied, that after the impugned order of retirement dated 31.12.2002 was set aside, the appellant was entitled to all consequential benefits. The fault lies with the respondents in not having utilised the services of the appellant for the period from 1.1.2003 to 31.12.2005. Had the appellant been allowed to continue in service, he would have readily discharged his duties. Having restrained him from rendering his services with effect from 1.1.2003 to 31.12.2005, the respondent cannot be allowed to press the self serving plea of denying him wages for the period in question, on the plea of the principle of "no work no pay".

7. Respectfully following the above judgment, the impugned order of the respondents is set aside as not sustainable and the respondents Corporation is directed

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<sup>4</sup> (2016) 16 SCC 663

to make payment of all consequential benefits to the petitioner by giving him notional service till he attain the age of superannuation i.e., 58 years by adopting his date of birth as 01.11.1961 and pay all the consequential benefits to the petitioner within a period of 120 days from the date of receipt of copy of this order.

8. Accordingly, this writ petition is allowed. There shall be no order as to costs.

9. Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

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**JUSTICE P.MADHAVI DEVI**

Dated: 30.06.2022  
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