A VISAKHAPATNAM DOCK LABOUR BOARD.

v.

E. ATCHANNA AND ORS.

FEBRUARY 1, 1996

B [S.C. AGRAWAL AND G.T. NANAVATI, JJ.]

Service Law—Change of date of birth—Notification dated 30.11.1979 issued by Government of India prescribing procedure to be followed—Candidates required to take steps within 5 years from date of coming into force C *of notification.*

The respondents entered service of the appellant as Mazdoors between 1961 and 1969. At the time of their appointments the respondents had not produced any proof regarding their dates of birth. Therefore, their D **age as could be ascertained from their physical appearance, was recorded in their service books. As the respondents were to attain the age of superannuation between April and July 1995, intimations were given to them individually regarding the dates of their retirement. The respondents made representations, to the appellant to rectify their dates of birth on the basis of certificates issued by Panchayat authorities with a request to send** E **them to the Medical Board for ascertainment of their age. The requests were rejected. The respondents filed writ petitions in the High Court, praying for a declaration that they were entitled to continue in service till they attained the age of superannuation calculated on the basis of their correct dates of birth. In the alternative they also prayed to refer them to** F **the Medical Board for ascertainment of their real age and continue them in service in accordance with the determination to be made by the Board. Dismissing the petitions, Single Judge of that High Court held that as the request for correction of birth was not made within 5 years from the notification dated 30.11.1979 issued by the Government of India, the** G **appellant was justified in not entertaining their requests and for that reason, prayer for referring them to the Medical Board also could not be granted. In writ appeals, the Division Bench of the High Court passed an interim order directing the Director, Health Services to fix a date and accordingly inform the appellants therein for appearance before him or a Board constituted by him for determination of their age by such scientific** H **tests as were available. The appellant challenged the propriety of passing**

such an order at an interlocutory stage alleging that if this order was not set aside it will cause serious prejudice to the case of the appellants. A

Allowing the appeals, this Court

HELD : Entry of the respondents in the service was between 1961 and 1969. After remaining in service for more than 25 years they applied for alteration of their dates of birth and that too after they received notices regarding their superannuation. The reason given by the respondents for alteration of their dates of birth was that their ages were recorded in the service books only on the basis of their physical appearance. That may be so but it was not their case that they were not recorded in their presence. Merely because they are illiterate and had affixed their thumb impression in the service records it is not possible to believe that they did not know what was recorded therein with respect to their dates of birth. Moreover, the appellant had issued a Circular dated 10.7.1987 and it was intimated to all concerned after Government of India had issued the Notification dated 30.11.1979 prescribing the procedure to be followed for change of date of birth. The appellant is a Central Government Undertaking and that the said Notification which is incorporated as Note 5 to Fundamental Rule 56(m) applies to the respondents. Therefore, for alteration of their dates of birth the respondents were required to take steps within 5 years from the date of coming into force of the said notification. Even after the Circular was issued by the appellant, the respondents did not approach the appellant within reasonable time. The respondents had sought alteration on the basis of the certificates which did not provide irrefutable proof as regards their correct dates of birth, without deciding all these issues it was not proper to give the impugned directions. The request for referring the respondents to the medical board was refused by the appellant. The prayer was also rejected by the learned Single Judge. Whether that should have been done or not is itself in issue in the appeals. The impugned directions given at an interlocutory stage were very likely to cause serious prejudice to the appellant's case. [1130-E-H; 1131-A-C] B C D E F G

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2599-2601 of 1996.

From the Judgment and Order dated 10.10.95 of the Andhra Pradesh High Court in W.A.Nos. 1024-26 of 1995. H

A. Jayaram Additional Solicitor General, C.K. Sasi and Kailash Vasdev for the Appellant.

L. Nageshwara Rao and S. Udaya Kumar Sagar for the Respondents.

The Judgment of the Court was delivered by

NANAVATI. J. Leave granted.

These appeals arise out of a common order passed by the Andhra Pradesh High Court in writ Appeal Nos. 1024, 1025 and 1026 of 1995.

Between 1961 and 1969 the respondents entered service of the appellant as Mazdoors. At the time of their appointments, the respondents had not produced any proof regarding their dates of birth. Therefore, their age as could be ascertained from their appearance, was recorded in their service books. As the respondents were to attain the age of superannuation between April and July 1995, intimations were given to them individually regarding the dates of their retirement. They made representations to the appellant to rectify their dates of birth on the basis of certificates issued by Panchayat authorities. Subsequently, they also requested the appellant to send them to the Medical Board for ascertainment of their age. As the appellant did not accede to their requests they filed writ petitions in the High Court. They prayed for a declaration that they are entitled to continue in service till they attain the age of superannuation calculated on the basis of their correct birth dates. In the alternative, they also prayed that the appellant be directed to refer them to the Medical Board for ascertainment of their real age and continue them in service in accordance with the determination to be made by the Board. The petitions were heard by a learned Single Judge of that Court. He not only doubted the veracity of the certificates produced by the respondents but also held that as the request for correction of birth dates was not made within 5 years from the notification dated 30.11.1979 issued by the Government of India, the appellant was justified in not entertaining their requests. The learned Judge also held that for that reason, prayer for referring them to the Medical Board also could not be granted. He, therefore, dismissed the petitions by his common order dated 27.4.1995.

On 17.7.1995 the respondents preferred writ appeals before the

Division Bench of the High Court. On 10.10.1995 it passed an interim order as it was of the opinion that before making any substantive order it should have an independent assessment of the age of the appellants before it. By that it gave the following directions :

> "(1) The Director. Health Services. State of A.P. is directed to fix a date and accordingly inform the appellants herein for appearance before him or a Board constituted by him for determination of their age by such scientific tests as are available.
>
> (2) Appellants accordingly are directed to obtain from the office of the Director. Health Services information about the date fixed for their appearance and appear when directed to do so by the Director, Health Services.
>
> (3) The Director, Health Services is directed to submit a report to this court about the age of the appellants herein.
>
> All the above must be complied within one month. Post after one month.

The appellant questions the propriety of passing such an order at an interlocutory stage. It was submitted that if this order is not set aside it will cause serious prejudice to the case of the appellants. On the other hand the learned counsel for the respondent supported the order on the ground that earlier also the High Court had in similar matters passed such orders.

This Court in *Union of India* v. *Hamam Singh* 1993 (2) SCC 162 had an occasion to deal with a case where an application by an employee for correction of date of birth was made only after being notified about his date of superannuation and not within the period of 5 years from the date of coming into force of the Government of India's Notification dated November 30, 1979. In that case entry into the Government service was in 1956 and the application for correction of date of birth was made in 1991. This Court observed that inaction of the employee for a period of about 33 years from the date of joining service precluded him from showing that entry of his date of birth in service record was not correct and that Central Administrative Tribunal committed an error in issuing the direction to correct his date of birth. This Court has further observed as under :

> .....It is open to a civil servant to claim correction of his date

A of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the Government servant must do so without any unreasonable delay. In the absence of any provision in the rules and correction of date of birth, the general principle of refusing relief on grounds of laches or stale claims, is generally applied by the courts and tribunals. It is nonetheless competent for the Government to fix a time-limit, in the service rules, after which no application for correction of date of birth of a Government servant can be entertained. A Government servant who makes an application for correction of date of birth beyond the time, so fixed, therefore, cannot claim, as a matter of right, the correction of his date of birth even if he has good evidence to establish that the recorded date of birth is clearly erroneous. The law of limitation may operate harshly but it has to be applied with all its rigour and the courts or tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire. Unless altered, his date of birth as recorded would determine his date of superannuation even if it amounts to abridging his right to continue in service on the basis of his actual age.

As regards the delay in making applications for correction facts of these cases are almost similar to the facts in Harnam Singh's case (supra). Entry of the respondents in the service was between 1961 and 1969. After remaining in service for more than 25 years they applied for alteration of their birth dates and that too after they received notices regarding their superannuation. The reason given by the respondents for alteration of their dates of birth was that their ages were recorded in the service books only on the basis of their physical appearance. That may be so : but it was not their case that they were not recorded in their presence. Merely because they are illiterate and had affixed their thumb impressions in the service records it is not possible to believe that they did not know what was recorded therein with respect to their dates of birth. Moreover, the appellant had issued a Circular dated 10.7.1987 and it was intimated to all concerned after Government of India had issued the Notification dated 30.11.1979 prescribing the procedure to be followed for change of date of birth. The appellant is a Central Government undertaking and that the said Notification which is incorporated as Note 5 to Fundamental Rule 56(m)

applies to the respondents. Therefore, for alteration of their dates of birth the respondents were required to take steps within 5 years from the date of coming into force of the said notification. Even after the Circular was issued by the appellant, the respondents did not approach the appellant within reasonable time. The respondents had sought alteration on the basis of the certificates which did not provide irrefutable proof as regards their correct cases of birth. Without deciding all the these issues it was not proper to give the impugned directions. The request for referring the respondents to the medical board was refused by the appellant. That prayer was also rejected by the learned Single Judge. Whether that should have been done or not is itself in issue in the appeals. The impugned directions given at an interlocutory stage were very likely to cause serious prejudice to the appellants case. Therefore, these appeals are allowed and the impugned order dated 10th October. 1995 passed in writ Appeal Nos. 1024, 1025 and 1026 of 1995 is set aside. No order as to costs.

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R.A. Appeals allowed.