

OA 561 OF 2014

J U D G E M E N T

The instant application has been filed praying for following relief:-

- a) An order do issue directing the concerned respondent authorities to forthwith reconsider the applicant to join the above said post in order to fulfill the quota of service.
- b) An order do issue directing the concerned respondent authorities to forthwith pay the applicant all arrear and all the service benefits which is due for more than 5 (five) months and further more pay the applicant all arrear salaries and service benefits from the date of such reconsideration.
- c) To set aside the charge sheet dated 2nd July, 2013 and Charge Sheet No. C/181 dated 11th April, 2014.
- d) To call for the records of the instant case so that conscionable justice may be rendered by passing appropriate order.
- e) Any other appropriate order or orders direction or directions as this Hon'ble Tribunal may deem fit and proper to protect the legitimate and expected right of the applicant.

As per the applicant, she joined the service as Group-D employee in the Directorate of Health Services on 19.09.1973. At the time of joining, her date of birth has erroneously recorded as 16.01.1953 in her service book at page 3. However, in the meantime she passed the School Final Examination as a private

candidate in the year 1975 and School authority after through scrutiny had given a certificate dated 24.04.1998 (Annexure-A1) mentioned her date of birth is 01.07.1956. On the basis of which, her service record was also corrected. As per the applicant, even she was promoted to L.D.C. on 10.02.1999 on the basis of the said date of birth (Annexure-A2). Thereafter the applicant was transferred from Midnapore to Birbhum vide order dated 07.12.2000 (Annexure-A3). According to the applicant, though her date of birth was corrected in the service book but her corrected date of birth did not get reflected in the gradation list. Therefore, the applicant made a representation dated 05.04.2002 before the Director of Health Services, West Bengal praying for correction of her date of birth in the gradation list of Suri Sadar Hospital (Annexure-A4). Thereafter, the office of the Director of Health Services, West Bengal vide letter dated 06.04.2005 had directed the C.M.O.H., Suri, Birbhum to countersign over the corrected date of birth in her service book (Annexure-A5) and subsequently, C.M.O.H., Suri as per the instruction of the Director of Health Services had countersigned the corrected date of birth on 22.06.2005. However, in the meantime the applicant was served with a letter dated 01.11.2012, whereby she was asked to submit the papers for preparation of pension treating her date of superannuation (date of birth 16.01.1953) 31.01.2013. In the meantime, the Superintendent, Suri Sadar Hospital due to some personal issues had started harassing her and ultimately vide letter dated 01.11.2012 directed her to submit the pension papers. Thereafter, she immediately made representation on 16.01.2013 (Annexure-A10). However, she was forced to retire earlier from the service on the basis of date of birth i.e 16.01.1953. which is evident from the letter dated 01.02.2013 issued by Superintendent, Suri Sadar Hospital to the Director of Health Services, West Bengal. (Annexure-A-10). Thereafter, the applicant made another representation dated 01.02.2013 (Annexure-A11) but no action has been taken with regard to her premature retirement. Moreover, she was also served with show cause notice dated 02.07.2013 (Annexure-A12). Being aggrieved she has filed this

instant application. However, during course of hearing, the counsel for the applicants has submitted that he is not pressing prayer 1© presently and has prayed for leave to challenge the same in different OA.

The respondents have filed their reply wherein they have stated that in response to the letter dated 16.10.2012 (Annexure-R-2) and 31.01.2013 and in response to memo dated 01.02.2013 of Superintendent, Suri Sadar Hospital, Birbhum, the Joint Director (Personnel) of Health Services, West Bengal vide his letter dated 22.02.2013 had communicated the observation of the Joint Secretary (Law) dated 14.02.2013 whereby the date of birth of the applicant as 01.07.1956 was not accepted. (Annexure-R4).

The applicant has filed rejoinder wherein she denied the disputed the contention made by the respondents.

We have heard both the parties. However, during the course of hearing, the respondents were directed to submit the service book of the applicant, which was submitted by the respondents on 09.10.2018. After going through the service book, it is noted that though earlier occasion the date of birth of the applicant was recorded as 16.01.1953 as per school leaving certificate. However, subsequently, as the applicant passed the School Final Examination from West Bengal Board of Secondary Education in the year 1975, thereafter on the basis of the School Final Examination pass certificate, her date of birth was accepted by the Director of Health Services, West Bengal vide order No. HPT/8S-196-73/KW/A7767 dated 03.11.1998 and on the basis of said date of birth, she was also promoted to the post of L.D.C. on 02.02.1999. Subsequently, the said date of birth was also countersigned by the C.M.O.H, Birbhum on 22.06.2005 as per the direction of the Office of the Director of Health Services, West Bengal dated 06.04.2005.

From the perusal of the original service book, it is clear that the date of birth of the applicant has already been accepted and corrected by the authority in the year 1998 and subsequently countersigned as per the direction of the Director of Health Services, West Bengal in the year 2005. Thus, we failed to understand on what basis the applicant was asked to retire prematurely. It is further noted that even no show cause notice with regard to subsequent change of date of birth has been issued prior to her premature retirement. Even the decision of rejecting his corrected date of birth on the advice of Joint Secretary (Law) dated 14.02.2013 is a subsequent event i.e. after her impugned superannuation dated 31.01.2013. Further, in the service book, admittedly the date of birth of the applicant has been recorded after making correction by the competent authority i.e. as per the direction of the Director of Health Services, West Bengal. Therefore, we have no alternative to hold that the date of birth mentioned in the service book i.e. 1st July, 1956 has to be taken into account for the purpose of superannuation and in that case the actual date of superannuation should be 30.06.2016 instead of 31.01.2013.

In view of the above, we direct the authority to treat the date of birth of the applicant as 1st July, 1956. Since the applicant was forcefully retired on 31.01.2013, therefore, the applicant is deemed to be in service for the period from 31.01.2013 to the date of her actual retirement i.e. up to 30.06.2016 on the basis of her corrected date of birth as 1st July, 1956. The respondents are also directed to pay consequential benefit within a period of eight weeks from the date of receipt of the order.

Accordingly, OA is disposed of with the above observations and directions with no order as to costs.

P. RAMESH KUMAR
MEMBER (A)

URMITA DATTA(SEN)
MEMBER (J)