

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 181 of 2014**

Prabhuram, S/o Late Shri Durjan, aged about 54 years, presently working as mechanical fitter, Bartunga Mines, Chirmiri, Distt. Korea, Resident of Quarter No.3/3, New Minus, Near Masjid, Bartunga, Chirmiri Colliery, Police and Revenue Distt. Korea (CG)

---- Appellant

Versus

1. South Eastern Coalfields Limited through the Managing Director, Seepat Road, Bilaspur, PS. Sarkanda, Police & Revenue Distt. Bilaspur (CG)
2. Chief General Manager, South Eastern Coalfields Limited, Chirmiri Colliery, Police and Revenue Distt. Korea (CG)
3. Sub Area Manager, Bartunga Mines, Chirmiri Colliery, Police and Revenue Distt. Korea (CG)
4. Sr. Personnel Manager, Bartunga Mines, Chirmiri Colliery, Police and Revenue Distt. Korea (CG)

---- Respondents

For Appellant:	Shri Pushkar Sinha, Advocate.
For Respondents:	Shri K.K. Shrivastava, Advocate.

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

Per Navin Sinha, Chief Justice

30/04/2015

The present appeal arises from order dated 4.3.2014 dismissing W.P. (S) No.1078/14 declining to entertain the challenge by the Appellant seeking correction of his date of birth from 26.7.1954 to 8.4.1959.

2. Learned Counsel for the Appellant submits that he was appointed as a majdoor on 16.8.1984. At the time of appointment, no documents were sought from him with regard to his date of birth. He was not aware what was his date of birth recorded suo motu by the Respondents at the time of his

entry in service. He was first made aware in 1992 that his date of birth has wrongly been recorded by the Respondents as 26.7.1954. He filed an application on 5.11.1993 supported by his Primary School Certificate of Class V pass that his date of birth was 8.4.1959 and it may be corrected accordingly. When no action was taken, he submitted another representation on 2.1.2003 followed by another dated 26.3.2012. Having failed to evoke any response the Appellant preferred W.P.(S) No.3088/2013. On 26.9.2013, the Writ Petition was disposed to decide the representation within time indicated. The Respondents rejected the representation by order dated 15.2.2014, challenged afresh leading to the order under appeal.

3. If the Appellant had produced his Primary School Certificate mentioning his date of birth and the genuineness of the certificate was not in doubt, there was no occasion for the Respondents to refer his case to the Age Determination Committee which under Implementation Instruction No.76 was to be done only where no documentary evidence with regard to the age was available.

4. The Respondents prematurely retired the Appellant on 31.7.2014. Similar issue has already been considered by this Court in W.P.(S) No.5367/2012 (Amarnath Kurre vs. South Eastern Coalfields Limited) allowing the prayer for correction of the date of birth setting aside the retirement date as determined by the Respondents.

5. Learned Counsel for the Respondents has relied upon orders in Writ Appeal No.399/14 (South Eastern Coalfields Limited vs. Sampat Kumar Chouhan), Writ Appeal No.84/14 (Amarjeet Singh vs. South Eastern Coalfields Limited through its C.M.D) and Writ Appeal No.533/13 (South Eastern Coalfields Limited vs. Amarnath Kurre) to submit that there is no merit in the appeal.

6. We have considered the submission on behalf of the parties. The date of birth entered in the Statutory Form-B register at the time of entry in service was 26.7.1954 is not in dispute. The Appellant alleges it is erroneous. The entry being in a Statutory register, a presumption arises of its correctness as based on the information furnished by the Appellant and not a figment of imagination by the Respondents. In Sampat Kumar Chauhan (*supra*) it was noticed from (2005) 11 SCC 477 (State of Uttaranchal & Others vs. Pitamber Dutt Semwal) that once an employee has signed the Form-B register mentioning his date of birth, it was not permissible for him to urge error in the entry. It was observed that there shall be a presumption of correctness and sanctity of the date of birth mentioned in a statutory register as compared to any other document and the onus lies on the Appellant to disprove the same.

7. It was the case of the Appellant in his writ petition that he was made aware of the wrong entry of his date of birth for the first time in 1993. But we find from the records that pursuant to the order of the Court in W.P.(S) No.3088 of 2013, in his representation dated 9.10.2013, the Appellant acknowledged that his service records were prepared in 1987 mentioning his date of birth as 26.7.1954 and that he had immediately represented though he was not in possession of a copy of the representation. Apparently the contention that he was made aware of the erroneous date of birth recorded in 1993 is an afterthought and a well thought false plea made to gain an illegal advantage in the case. The writ petition was sufficient to be dismissed on this ground alone.

8. We have also examined the Primary School Certificate sought to be relied upon by the Appellant. The submission before us was that it is a duplicate. The certificate does not say so. The pleadings in support thereof at para- 8.4 of the Writ Petition also do not state that it was a duplicate. The certificate mentions two different dates of issuance, 22.4.72 and 22.4.92.

There are interpolations in the year also in one of them.

9. Be that as it may, once the matter was referred by the Respondents to the Age Determination Committee, pursuant to the order dated 26.9.2013 passed in W.P(S) No.3088/13, no further issue remains for our consideration in view of (2000) 8 Supreme Court Cases 696 (G.M., Bharat Coking Coal Ltd., West Bengal vs. Shib Kumar Dushad) observing as follows:-

“20. From the provisions in the instructions referred to above, it is clear that in the case of dispute over the date of birth of an existing employee who has neither a Matriculation Certificate/Secondary School Certificate nor a statutory certificate in which the Manager has certified the entry regarding the date of birth to be authentic the employer is to refer the matter to the Medical Board. Therefore, no fault can be found with the action taken by the appellant to refer the case of the respondent to the Medical Board. The Medical Board as laid down in the instructions is to consider the matter on the evidence available with the colliery management and in accordance with the requirement of the medical jurisprudence. As noted earlier, in the present case the Medical Board determined the age of the respondents to be 52 years in 1988 and the employer (appellant) accepted such determination. In the circumstances there was hardly any scope for the High Court to interfere with the date of birth as determined by the employer (appellant herein) and issue a writ of mandamus that the date as claimed by the employer (the respondent herein) should be accepted.”

10. The Appellant was therefore aware of his date of birth recorded in the service records if not at the time of entry in service in 1984, definitely in 1987 when the Respondents made it known to him. Mere filing of representations is no explanation for delay. The first Writ Petition was filed years later in 2013. All these aspects have been considered by us more than once in Sampat Kumar Chouhan (supra), Amarjeet Singh (supra) and Amarnath Kurre (supra). Reliance by the Appellant on the order of the Learned Single Judge in Amarnath Kurre (supra) set aside in appeal is completely erroneous and unfortunate.

- 11. We find no reason to interfere with the order under appeal.
- 12. The appeal is dismissed.

(Navin Shiha)
CHIEF JUSTICE

(P. Sam Koshy)
JUDGE