

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
WRIT APPEAL No. 399 OF 2014

1. South Eastern Coalfields Ltd. Through its Chairman Cum Managing Director, Seepat Road, Bilaspur (CG)
2. Superintendent/Manager, Rajnagar R.O. Colliery, South Eastern Coalfields Ltd. Hasdeo Area, PO- Rajnagar Colliery Distt: - Anuppur (MP)
3. Sr. Personnel Manager, South Eastern Coalfields Ltd. Rajnagar (RO), Hasdeo Area, PO Rajnagar Colliery Distt: Anuppur (MP)
4. Sub Area Manager, South Eastern Coalfields Ltd. Rajnagar R.O. Colliery, Hasdeo Area, PO- Rajnagar Colliery Distt: Anuppur (MP) ...APPELLANTS

Versus

Sampat Kumar Chauhan, Aged about 62 years, R/o Q. No. B-63, Near Store, Rajnagar Colliery, Hasdeo Area, Anuppur (M.P.) - Working as Foreman In Charge Electrical, South Eastern Coalfields Ltd. ...RESPONDENT

For Appellants : Shri Abhishek Sinha with Ms. S. Harshita, Advocates.

For Respondent : Shri Alok Dewangan, Advocate.

HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE SHRI GOUTAM BHADURI, J.

ORDER ON BOARD

Per Navin Sinha, Acg. C.J.

27.02.2015

1. The present appeal assails order dated 21.8.2014 allowing Writ Petition (S) No. 4161 of 2012. The Learned Single Judge has directed the Appellants to correct the date of birth of the Respondent according to his matriculation certificate issued in 1974 as 23.1.1955. Directions have further been given to reinstate him in service with consequential benefits till he would superannuate in January 2015.

2. Learned Counsel for the Appellants submits that if the Respondent was in possession of a matriculation certificate of the year 1974 showing his date of birth as 23.1.1955 he ought to have produced it at the time of appointment on 14.12.1975. No explanation has been offered why he did not do so. The date of birth recorded in the statutory Form 'B' register under Section 48 of the Mines Act, 1952 (hereinafter called 'the Act') at the time of appointment was based on the disclosure made by the Respondent himself and he signed it also in confirmation. It stands to reason that if the date of birth was being recorded wrongly he would have protested and refused to sign.

3. It is next submitted that the Respondent was regularly appointed on 14.12.1975 at the New Rajnagar Colliery. His age in the statutory Form 'B' register, signed by him, was mentioned as 23 years which makes his date of birth as in 1952. It was not an inadvertent error as the date of birth as 14.12.1952 was recorded again in the fresh statutory Form 'B' when he was transferred to Rajnagar Colliery. It is not the case of the Respondent that his date of birth entered in the Registers was a figment of imagination by the Appellants and that he had not furnished any such date. Both the Registers were signed by the Respondent. He was not an illiterate rustic, but a matriculate, and had signed the Registers in English script. The Respondent, in Form PS 3 and PS4 regarding pension filled on 1.5.1998 and 9.5.1999 again mentioned his date of birth as 14.12.1952 and initialed the same also in English. In the nomination form for pension also, he mentioned his date of birth as 14.12.1952. One entry could be a mistake requiring correction. But the same does not hold good if the same date of birth has been mentioned by the Respondent repeatedly.

4. The date of birth 23.1.1955 mentioned in the service certificate dated 23.9.1992 cannot take precedence over the date of birth mentioned in the statutory Form 'B' Register. The former appears to have been issued on basis of entries at the time he was an apprentice before regular appointment. It is for the Respondent to explain that why he was mentioning different dates of birth at different times. The date of birth mentioned in the statutory Form 'B' register carries with it statutory force about its correctness.

5. Learned Counsel for the Appellant further submits that the Respondent claims to have been informed on 17.8.1997 that if there were any errors with regard to the date of birth, he may seek correction of the same. He claims to have filled up the correction form on 17.8.1987 but represented eleven years later on 14.7.1998. In the meantime on 1.5.1998 he had again mentioned his date of birth as 14.12.1952 in his pension form. Thereafter, he again kept quiet for seven long years till he represented on 15.10.2005 followed by another representation on 25.8.2009 after which he preferred Writ Petition (S) No. 6472 of 2009. He did not press his claim on merits on any claimed date of birth mentioned in his matriculation certificate but only sought a direction for determination of age by the Age Determination Committee (hereinafter referred to as 'ADC').

6. The order dated 27.8.2012 passed by the ADC is reasoned and speaking disclosing full application of mind and the materials considered by it. There is no infirmity in the decision making process and neither has the Learned Single Judge interfered with the decision of the ADC much less set it aside. If there was no infirmity in the decision making process, this Court in exercise of judicial review cannot substitute its view over

that of the ADC. Judicial review does not lie on the merits of the decision unless it be apparently perverse. Reliance was placed on (2000) 8 SCC 696 (G.M. Bharat Coking Coal Ltd. West Bengal v. Shib Kumar Dushad). It was next contended that the Learned Single Judge erred in holding that the claim was not belated. If the Respondent was sanguine of his date of birth and the error committed by the Appellants he ought to have come to the Court at the earliest possible opportunity instead of filing repeated representations which cannot be an explanation for delay unless a legal remedy was being pursued. If he could have approached the Court in 2009, he could have done so earlier in 1987 or 1998. Even in 2009, he did not seek any positive direction and it was only an attempt to obtain orders for overcoming the earlier delay to lay foundation for a fresh cause of action. Reliance was placed on (2005) 11 SCC 477 (State of Uttaranchal & Others v. Pitamber Dutt Semwal) to submit that once he had signed the Form 'B' Register mentioning his date of birth as 14.12.1952 on two occasions and also in the pension form on two occasions and the nomination form also it was not permissible for him to urge error in his statutory Form 'B' register entries made 34 years earlier before filing the first writ petition in the year 2009. The writ jurisdiction being an equitable jurisdiction, no relief could be granted to the Respondent as held in (2014) 13 SCC 681 (Eastern Coalfields Ltd. v. Bajrangi Rabidas).

7. Learned Counsel for the Respondent submit that the order of the Learned Single Judge is well considered and reasoned calling for no interference. Implementation Instruction No. 76 (hereinafter called 'I I 76') issued by the Appellants for correction of errors in the date of birth was noticed and approved in 2014 AIR SCW 2364 (M/s. Bharat Coking

Coal Ltd. v. Chhota Birsa Uranw). It provides that if the matriculation certificate was available mentioning the date of birth, it had to be treated as authentic. There was no occasion for the Appellants to re-determine his date of birth. The ADC has not denied his matriculation certificate but only opined that it was not submitted at the time of appointment.

8. It was next submitted that in the Coal Mines Provident Fund Form filled as early as 2.2.1975, the date of birth was mentioned as 23.1.1955 which was in accord with that mentioned in the matriculation certificate. The same date is mentioned in the Service certificate issued by the Appellants also. This was based on entries in the Matriculation certificate. Obviously the earlier date of birth mentioned was an error or omission. It was for this reason that the Appellants on 17.8.1997 had asked him if he desired to make any corrections. It is next submitted that his initial appointment on 14.12.1975 was made on basis of his I.T.I. qualification. The Appellants never asked him to produce his matriculation certificate. No sooner that he filled up the pension and nomination form in May, 1998, he filed a representation as early as on 14.7.1998 with regard to the error asking for correction of his date of birth as 23.1.1955.

9. We have considered the submissions on behalf of the parties and also examined materials on record.

10. The date of birth of a person is a question of fact. If there are conflicting dates of birth on basis of the materials placed at different times by the claimant himself, it becomes a disputed question of fact that cannot be examined in the writ jurisdiction. It is a fact best known to the person concerned. It is for the person to act in his own interest by

ensuring that it is recorded correctly, more particularly when it relates to employment and has long term consequences for the concerned. There are no allegations of any fraud or interpolation made by the Appellants.

11. The date of birth of a person at the time of entry in service is not based on a figment of imagination by the employer. It is always based on the information furnished by the employee. An illiterate rustic employee can be a different issue. The Respondent was a matriculate and I.T.I trained. He had the capacity to read, write and understand for protecting his interest in employment regarding tenure based on date of birth. We also notice that he has signed the documents in english language.

12. Even if the qualification for regular appointment was I.T.I. training certificate and the Appellants did not ask for his matriculation certificate, the Respondent offers no explanation how his date of birth came to be recorded as 14.12.1952 in the Statutory Form 'B' register on two occasions and signed by him. Surely if he was in possession of a matriculation certificate at the time of his appointment, he would have objected to the recorded date of birth and relied by production of his matriculation certificate. No explanation has been offered by the Respondent. The matriculation certificate therefore may have to be the subject of further enquiry itself. There will have to be sanctity to the date of birth mentioned in the statutory register as compared to any other document. The Respondent is alone answerable for his travails.

13. This Court in exercise of powers of judicial review is concerned with the decision making process by the Appellants and not the merits of the decision itself. We do not find any infirmity in the decision making process by the ADC in its decision dated 27.8.2012. The order is

reasoned and speaking discussing the materials considered by it. The Respondent does not allege that the ADC has taken into consideration irrelevant materials or failed to consider relevant materials. There are no allegations of malafide. The order states he could not submit proof of having produced matriculation certificate at the time of appointment. The Statutory Form 'B' Register both at New Raj Nagar and Raj Nagar signed by the Respondent mentions his date of birth as 14.12.1952. The ADC rightly did not give precedence to entries in the Service register. Moreover, the ADC adequately discusses that while other entries in the service register were in blue ink, only the date of birth was in red ink and in a different handwriting raising doubts about the same. The order of the ADC has not been quashed or set aside. It is not permissible in exercise of judicial review to arrive at a different conclusion on basis of the same materials merely because it was possible to do so.

14. The limits of the power for judicial review was considered in (2002) 3 SCC 496 (Haryana Financial Corporation v. Jagdamba Oil Mills) as follows :-

“10. The obligation to act fairly on the part of the administrative authorities was evolved to ensure the rule of law and to prevent failure of justice. This doctrine is complementary to the principles of natural justice which the quasi-judicial authorities are bound to observe. It is true that the distinction between a quasi-judicial and the administrative action has become thin, as pointed out by this Court as far back as 1970 in *A.K. Kraipak v. Union of India*. Even so the extent of judicial scrutiny/judicial review in the case of administrative action cannot be larger than in the case of quasi-judicial action. If the High Court cannot sit as an Appellate Authority over the decisions and orders of quasi-judicial authorities, it follows equally that it cannot do so in the case of administrative authorities. In the matter of administrative action, it is well known, more than one choice is available to the administrative

authorities; they have a certain amount of discretion available to them. They have “a right to choose between more than one possible course of action on which there is room for reasonable people to hold differing opinions as to which is to be preferred” (as per Lord Diplock in *Secy. of State for Education and Science v. Metropolitan Borough Council of Tameside*, All ER at p. 695f). The court cannot substitute its judgment for the judgment of administrative authorities in such cases. Only when the action of the administrative authority is so unfair or unreasonable that no reasonable person would have taken that action, can the court intervene.....”

15. Chhota Birsa Uranw (*supra*), does not lay down any absolute principle that under I I 76, the date of birth had compulsively to be corrected if the employee so requested. It came to be delivered on its own facts :-

"8....The position which emerges on the basis of the above is that after having joined service in 1973 when the Form 'B' register was filled and when it was filled once again in 1983 when the respondent was transferred, there were certain discrepancies regarding permanent address, father's name and date of joining. In 1987, when the appellant made available the details of all employees for verification of service records, the respondent raised the dispute regarding his incorrect particulars being the date of joining, father's name, permanent address and date of birth. Apparently, the abovementioned corrections other than date of birth were made. "

16. In (1987) 1 SCC 213 (*Ambica Quarry Works v. State of Gujarat*) it was observed that the ratio of a decision had to be understood in the fact situation that it came to be delivered and not what may be said to logically flow from it observing :-

“18.The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it.....”

16. The Respondent does not deny that he signed his date of birth on five occasions as 14.12.1952 but seeks to evade the consequences of his own acts relying only on the Service certificate issued by the Appellants which has itself been considered doubtful by the ADC for reasons discussed by it and not denied by the Respondent. In Pitamber Dutt (supra) relied upon by the Appellant, it was observed as follows:

"6....Be that as it may, even *dehors* the said rule, we are of the opinion that the plea of the respondent that the date of birth was wrongly recorded was highly belated. He joined service in 1964, the service book was prepared in 1965 and according to the appellant he has signed the said service-book at least on three occasions. In any case, the plea of wrong recording of the age in the service book has been taken nearly thirty years after the service-book was prepared...."

17. Reliance has also appropriately been placed on Bajrangi Rabidas (supra) and Shib Kumar Dushad (supra) by the Appellants that the issue of date of birth of an employee is important not only for the employee but also for the employer. We may also notice that in Shib Kumar Dushad (supra), the matter have been referred to the ADC which held against the employee. It was interfered with by the High Court. It was held by the Apex Court that in such matters there was hardly any scope for interference with the date of birth as determined by the employer, much less issue any writ of mandamus. We may also profitably quote from Shib Kumar Dushad (supra) as follows:

"15. Before entering into the question of validity and sustainability of the judgment passed by the Single Judge and the Division Bench of the High Court in this case we would like to make the observation that in a case where the controversy over the date of birth of an employee has been raised long after joining the service and the matter has engaged the attention of the authority concerned and has been determined by

following the procedure prescribed under the service rules or general instructions issued by the employer and it is not the case of the employee that there has been any arithmetical mistake or typographical error patent on the face of the record, the High Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution should not interfere with the decision of the employer."

"17. The date of birth of an employee is not only important for the employee but for the employer also. On the length of service put in by the employee depends the quantum of retiral benefits he would be entitled to. Therefore, while determining the dispute in such matters courts should bear in mind that a change of the date of birth long after joining service, particularly when the employee is due to retire shortly, will upset the date recorded in the service records maintained in due course of administration should not generally be accepted. In such a case the burden is heavy on the employee who comes to the court with the case that the date of birth in the service record maintained by the employer is untrue and incorrect. The burden can be discharged only by producing acceptable evidence of a clinching nature. We are constrained to make this observation as we find that in a large number of cases employees who are on the verge of retirement raise a dispute regarding correctness of the date of birth entered in the service record and the courts are inclined to pass an interim order for continuance of such employee beyond the date of superannuation on the basis of the entry of date of birth in the service record. Such a situation cannot be commended for the reason that the court in passing such an interim order grants a relief to the employee even before determining the issue regarding correctness of the date of birth entered in the service record. Such interim orders create various complications. Anticipated vacancy for which the employee next in the line has been waiting does not materialize, on account of which the junior is denied promotion which he has all along been led to believe will be his due on the retirement of the senior. "

18. In (1996) 7 SCC 421 (Union of India v. Ram Suia Sharma) a delay of 25 years was considered as inordinate and belated to entertain a claim for correction of the date of birth and the order of the Tribunal allowing the same was set aside.

19. The law that a belated claim of birth should not be entertained has been repeated time and again in judicial precedents. In (2011) 9 SCC 664 (State of Madhya Pradesh & Others v. Premlal Shrivastava) where also the correction of the date of birth was sought 25 years later it was held as follows:

"12. Be that as it may, in our opinion, the delay of over two decades in applying for the correction of date of birth is *ex facie* fatal to the case of the respondent, notwithstanding the fact that there was no specific rule or order, framed or made, prescribing the period within which such application could be filed. It is trite that even in such a situation such an application should be filed which can be held to be reasonable. The application filed by the respondent 25 years after his induction into service, by no standards, can be held to be reasonable, more so when not a feeble attempt was made to explain the said delay. There is also no substance in the plea of the respondent that since Rule 84 of the M.P. Financial Code does not prescribe the time-limit within which an application is to be filed, the appellants were duty-bound to correct the clerical error in recording of his date of birth in the service book."

20. In the present case, the first writ petition in the year 2009 itself was filed 34 years after entry into service highly belated in nature seeking to resurrect a cause of action which stood extinguished by passage of time. Realizing the difficulties for himself, the Respondent did not seek adjudication on merits, but prayed for reference to the ADC to lay the foundation for a fresh cause of action on any adverse order that may be passed by the ADC, otherwise not available to him by passage of time. It appropriately compels us to refer (2008) 10 SCC 115 (C. Jacob v. Director of Geology and Mining) observing as follows :-

"8....He is aware that any such challenge would be rejected at the threshold on the ground of delay (if the application is made before tribunal) or on the ground of delay and laches (if a writ petition is filed before a High Court). Therefore, instead of challenging the termination, he gives a representation requesting that he may be taken back to service. Normally, there will

be considerable delay in replying to such representations relating to old matters. Taking advantage of this position, the ex-employee files an application/writ petition before the tribunal/High Court seeking a direction to the employer to consider and dispose of his representation. The tribunals/High Courts routinely allow or dispose of such applications/petitions (many a time even without notice to the other side), without examining the matter on merits, with a direction to consider and dispose of the representation.

9...If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.

11....When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of "acknowledgement of a jural relationship" to give rise to a fresh cause of action."

20. The order under appeal is held to be unsustainable. It is set aside.

The appeal is allowed.

Sd/-
ACTING CHIEF JUSTICE

Sd/-
JUDGE