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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 1327 of 2013**

Nanki Prasad Son of Shri Gokul Prasad, aged about 54 years, Resident of village Moddak, Police Station Jaigarpur, Post Office Maldah, District Janjgir-Champa, Chhattisgarh.

---- Petitioner**Versus**

1. Coal India Ltd. a company duly registered under the provisions of Companies Act, 1956 a government of India undertaking through the Chairman-cum-Managing Director, 10 Netaji Subhas Road, Coal Bhawan, Kolkata, West Bengal 700001
2. Bharat Coking Coal Ltd. a company duly registered under the provisions of the Companies Act 1956 through the Chairman-cum-Managing Director, Koyla Bhawan, Koyla Nagar, Thana and post Koyla Nagar, District Dhanbad Jharkhand.
3. Project Officer, Futki Balihari Project Bharat Coking Coal Ltd. Post Kusunda, Dhanbad Jharkhand.
4. South Eastern Coalfields Ltd. a company duly registered under the provisions of the Companies Act, 1956, through the Chairman cum Managing Director, Seepat Road, P.B. 60, Thana Sarkanda, Bilaspur, Chhattisgarh.
5. Chief General Manager, South Eastern Coalfields Ltd. Raigarh Area, Raigarh, District Raigarh, Chhattisgarh.
6. Senior Manager (Personnel) South Eastern Coalfields Ltd. Raigarh Area, Raigarh District Raigarh, Chhattisgarh
7. Area Personnel Manager, Raigarh Area, SECL PO Chhote Atarmuda, Raigarh, District Raigarh, Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Amrito Das, Advocate.
For Respondents/SECL	:	Shri R.K.Gupta, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice**Order on Board****31/08/2015**

1. Heard Learned Counsel for the Petitioner and the Respondent-SECL.
2. The Petitioner assails the order dated 28.1.2013 passed by the Respondents-SECL declining to correct his date of birth to read as 9.1.1959 in place of 9.1.1953.
3. Learned Counsel for the Petitioner submits that he was appointed in the Bharat Coking Coal Limited-Respondent No. 2 (hereinafter referred to as 'the BCCL') in 1982 and his services transferred to Respondents-SECL in 1994. Before transfer of his service, the Petitioner was reassessed for his age

alongwith 15 other employees in 1989 by the Deputy Medical Superintendent/Area Medical Officer, Futki Balihari Project. His name finds place at serial No. 3 in the report dated 25/27.4.1989 assessing him to be 30 years of age. Consequently, necessary corrections were made in the service records of the BCCL with regard to him. The date of birth was corrected from 9.1.53 to 9.1.1959. The service book incorporating the corrections was also attested by the Project Manager, BCCL. After his services were transferred to the Respondent-SECL, necessary records incorporating the corrected date of birth were not forwarded by the BCCL. Several correspondences have also taken place between the parties but no decision in accordance with the corrections made already was taken. Strong reliance is placed on the letters dated 28/29.9.2011 and 18.10.2012 written by the BCCL to the Respondent-SECL alongwith Form-B entries in this regard, all of which have not been considered and the Petitioner has been forced to superannuate six years earlier. There is no denial of these facts in the counter-affidavit and thus they stand admitted. The present is not a case of disputed date of birth or belated claim.

4. Learned Counsel for the Respondent-SECL questions the maintainability of the writ petition in view of the earlier Writ Petition (S) No. 6886 of 2011 having been dismissed as withdrawn without any liberty. It is further submitted that all aspects of the matter have been considered with regard to the date of birth of the Petitioner as per records available with the SECL and there is no illegality or arbitrariness in the impugned order dated 28.1.2013.

5. Having considered the submissions on behalf of the parties, in view of the fact that the impugned order dated 28.1.2013 is subsequent to withdrawal of Writ Petition (S) no. 6886 of 2011 on 15.3.2012, it is a fresh cause of action and the objection taken by the Respondent-SECL is overruled.

6. The pleadings by the parties make it evident that the Petitioner was earlier appointed in 1982 in BCCL. His age was reassessed on 25/27.4.1989 and the date of birth corrected. Subsequently, his services were transferred to the Respondent-SECL. From letters dated 28/29.9.2011 and 18.10.2012 written by the BCCL to Respondent-SECL read alongwith the counter-affidavit and the impugned order dated 28.1.2013, this Court is satisfied that the impugned order and the counter-affidavit do not take into consideration the two communications received from the BCCL with regard to age of the Petitioner having been corrected even before his services were transferred to the Respondent-SECL.

7. If that be the correct position, the order dated 28.1.2013 ex facie is not sustainable to the extent it fails to take into consideration the relevant materials in the decision making process. The order in its present form is therefore not sustainable and is set aside.

8. The Respondent-SECL is directed to take a fresh decision in the matter in accordance with law on basis of materials forwarded to it by the BCCL dated 28/29.9.2011 and 18.10.2012 within a maximum period of four weeks from the date of receipt and/or presentation of a copy of this order.

9. Needless to state that if the Respondent-SECL proposes to pass an order adverse to the Petitioner, it is required to pass a reasoned and speaking order. Conversely, if it finds substance in the contention of the Petitioner, it is expected that necessary appropriate orders shall also be passed simultaneously on all consequential aspects.

10. The writ petition stands disposed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE