

IN THE COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 464 /2015

(Shri Ashok Kumar s/o Ramnarayan Dubey vs. Western Coalfields Ltd. And 2 others)

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Office Notes, Office Memoranda of
Coram, appearances, Court's orders
of directions and Registrar's orders
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Court's or Judge's order

Mr.S.P.Bhandarkar, Advocate for the petitioner
Mr.Tushar Darda, Advocate for respondents

**CORAM : SMT. VASANTI A. NAIK &
A.I.S.CHEEMA, JJ.**

DATED : 14th September, 2015.

Heard.

By this petition, the petitioner seeks a direction to the respondents to correct the date of birth of the petitioner as 01.01.1962 instead of 01.07.1956.

The petitioner was appointed by the respondent- Western Coalfields Limited as a Peon on 18.6.1980 and on the basis of the documents tendered by the petitioner, the date of birth of the petitioner was recorded as 01.07.1956. When the petitioner was at the fag end of his services, the petitioner made a representation to the respondents to change his date of birth from 01.07.1956 to 01.01.1962. The representation of the petitioner was not decided. The petitioner then made an application under Section 13 (3) of the Registration of Birth and Death Act, 1969 for a direction to the Municipal Council, Kamptee to make

necessary correction in the name of the petitioner in the Register of Births. The Municipal Council was directed to issue a birth certificate in favour of the petitioner. On the basis of the order passed on the Application under section 13(3) of the Registration of Birth & Death Act, 1969, the petitioner, again, made a representation to the respondent-Western Coalfields to change the date of birth in the service record as the petitioner was due to retire on attaining the age of superannuation on 30th June, 2016. Since the respondents did not make any change in the birth-date of the petitioner in his service record, the petitioner has approached this Court with a prayer for direction to the respondents to correct the date of birth as 01.01.1962.

The relief sought by the petitioner cannot be granted. An age row cannot be decided in exercise of the writ jurisdiction. Certain documents are annexed by the petitioner to the petition to prove that his date of birth is not 01.07.1956, but the same is 01.01.1962. On a perusal of the relevant Instructions of the Western Coalfields Limited providing the procedure for determination/ verification of the age of the employees, it appears that the review/determination of date of birth in respect of the existing employees of the Western Coalfields Limited could be made only on the basis of the certificate issued by the recognized Universities, Board, middle pass certificate issued by the Board of Education only if such certificates are issued prior to the date of employment. In the instant case, the petitioner was employed in the year 1980. The petitioner has not passed the S.S.C. examination and hence the petitioner

is not in a position to produce any of the certificates on the basis of which the review/determination of the date of birth could be made by the respondents. Also, in the Application under Section 13 (3) of the Registration of Birth and Death Act, only the Municipal Council was arrayed as a respondent, and on the basis of the affidavit of the petitioner, the necessary change is directed to be effected in the Register of Births, maintained by the Municipal Council. It is stated on behalf of the respondents that in the year 1988-89 the petitioner and other employees were required to fill in an option form, in which details like the name of the employee, age, sex, designation, date of birth etc. were required to be filled. It is stated that the petitioner filed the option form on 25.4.1987 without making any grievance in regard to the wrongful recording of the date of birth. It is stated on behalf of the respondents that in the requisite forms like CMPF Form-A, PS-3 and PS-4, the date of birth of the petitioner is confirmed as 01.07.1956. It is stated that the petitioner has shown his date of birth as 01.07.1956 in the said forms. It is stated that in the service register and service record, the date of birth seems to have been tampered at one place and stated to be 01.07.1960 instead of 01.07.1956.

Several disputed questions of facts are involved in this case and a direction to the respondents to correct the date of birth of the petitioner as 01.01.1962 cannot be granted in the circumstances of the case. The judgment reported in 2014 (4) ALL MR 452 and relied on by the learned counsel for the petitioner,

cannot be made applicable to the facts of this case. In the said decision, the company had failed to follow the procedure as laid down in the implementation instructions. Such is not the case here. In fact, the case of the petitioner would be governed by the judgments reported in 2004 (3) SCC 394; 2005 (6) SCC 49; 2006 (6) SCC 537 and 2010 (14) SCC 423.

In the circumstances of the case, we decline to grant the relief sought by the petitioner. The petitioner is, however, free to seek a declaration against the respondent in respect of his birth-date from the Civil Court, if so advised.

The Writ Petition is dismissed with no order as to costs. The points raised in the petition are, however, kept open.

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