

**FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.**

Writ Petition No. 549 of 2015

Shamrao s/o Narayan Madase

v.

Western Coalfields Ltd. & anr.

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

Court's or Judge's orders

Mr. D.S. Thakur Advocate for the Petitioner.
Mr. S.C. Mehadia Advocate for the Respondents.

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**Coram : B.P Dharmadhikari &
S.B. Shukre, JJ.**

RESERVED on : 25th March, 2015.
PRONOUNCED ON : 31.03.2015.

By this petition, the petitioner is seeking a direction to the respondents for considering his representation dated 3.9.2014 requesting the respondents to review and correct the entry regarding his date of birth recorded in his service record maintained by the respondents.

2. The petitioner states that he joined services of respondents as a Loader "LTR" in the year 1979 and because of his

good record he was promoted as Driller Category V. According to him, at the time of his entry in the service, his date of birth was wrongly recorded in his service record as 01.7.1956, although the correct date of birth is 9.8.1960. He submits that entry of his date of birth in his service record was written not by him but by the officials of respondents and at that time he had submitted his School Leaving Certificate showing his educational qualification as 9th standard passed and date of birth as 9.8.1960 respectively. The petitioner after having realised the incorrectness of the said entry, made a representation dated 3.9.2014 to respondent no. 2 praying for correction of his date of birth in the service record. However, the respondents did not give any response to the said representation. Fearing that the petitioner would be superannuated on the basis of wrong entry of date of birth, he has filed the present petition.

3. We have heard learned counsel for the respective parties. We have perused the documents filed along with the petition, reply of the respondents and also the documents annexed to it with the assistance of learned counsel for both the sides.

4. It is the contention of learned counsel for petitioner that at the time of joining of service, the petitioner had submitted original School Leaving Certificate issued by St. Anthony's High School, Ajni, Nagpur, showing that petitioner was born on 9.8.1960, but some officials of the respondents, who filled up the necessary Forms, wrongly mentioned therein date of birth of petitioner as 1.7.1956. He further submits that the petitioner being semi illiterate, who could not know reading or writing in English, simply affixed his thumb impression on Form B and the relevant page of

service register. He submits that these documents were filled up in English and because of illiteracy, the petitioner could not understand incorrectness of the entry about his date of birth. He further submits that later on as the petitioner realised about his date of birth being wrongly mentioned in the service records, the petitioner made a representation for correction of his date of birth in the service record and also submitted duplicate copy of school leaving certificate. He submits that Implementation Instruction No. 76 dated 25.4.1988 lays down the procedure for verification of the age of employees and correction of disputed facts in the service record. He has invited our attention to clause (B) of said Instruction No. 76 which lays down that the date of birth mentioned in matriculation certificate or Higher Secondary Certificate or Middle Pass Certificate issued by the Board of Education/Department of Public Institutions should be treated as correct provided the certificate is issued by the competent authority prior to the date of employment. He submits that the petitioner had already furnished original School Leaving Certificate at the time of his initial appointment in the year 1979 but, it was not considered for recording his date of birth in the service record and, therefore, the petitioner has a right to seek review of the entry relating to his date of birth recorded in his service record.

5. Learned counsel for respondents submits that the petitioner who claims to be 9th standard passed person cannot be heard to say that he does not know as to how to read or write in English. He submits that Forms PS-3 and PS-4 submitted by the petitioner bear his signatures which appear to be in English language, copies of which have been filed along with the reply of the respondents. He also points out from these Forms that the

petitioner himself mentioned therein his date of birth as 01.7.1956. He also invites our attention to the particulars of service provided by the petitioner in Hindi which also mentions date of birth of the petitioner as 1.7.1956. He further submits that the petitioner had neither submitted original School Leaving Certificate at the time of joining of his service nor furnished any details about his educational qualification. He submits that at that time the petitioner had never disclosed that he was a 9th standard passed person. He further submits that the School Leaving Certificate, a duplicate copy of which has been annexed to the petition as Annexure-A, is seriously disputed by the respondents. He points out from this duplicate certificate that some of the columns therein, such as place of birth, last school attended and remarks, have been left blank. He submits that this certificate does not mention as to whether or not the petitioner had cleared 9th Standard examination. He also submits that according to this certificate, the petitioner had joined the school on 18.6.1977 and left it on 24.6.1978 and that would mean that the petitioner may have attended some other school prior to 1977 but neither the certificate gives any clue about the school previously attended by the petitioner nor the petitioner gives the name of the school attended by him prior to St. Anthon's High School, Ajni. Therefore, the learned counsel for respondents submits that the claim as made by the petitioner in this petition deserves to be rejected.

6. On considering the documents filed on record of this petition by both the sides, we find it difficult to ascertain as to who is right and who is not. The petitioner submits that he is semi illiterate person who does not know reading and writing in English but the Forms PS-3 and PS-4, which are annexures R-3 and R-4 filed

along with the reply of the respondents, give an impression that the petitioner has signed these Forms in English. Annexure-R-5 is the Form relating to particulars of service submitted by the petitioner himself. These particulars are written in Hindi and the date of birth of the petitioner has been shown therein as 1.7.1956. Forms PS-3 and PS-4 have been submitted by the petitioner on 26.4.1988 about 19 years after his initial appointment and at that time also the petitioner has apparently not disputed his date of birth recorded in service record. The School Leaving Certificate, which is a duplicate copy vide Annexure-A filed along with the petition, does not show as to whether or not the petitioner is a 9th standard passed person. In this document, two important columns, column no. 4 regarding place of birth and column no. 6 regarding last school attended, are left blank. Therefore, a question arises, as to what extent reliance can be placed upon the document vide Annexure-A. The petitioner has not explained as to why did he not declare his educational qualification at the time of his initial recruitment. The duplicate of School Leaving Certificate has been obtained by the petitioner in July 2006. The petitioner has not clarified as to why did it become necessary for him to obtain a duplicate School Leaving Certificate in July, 2006 and if he had obtained it, then why did he not take immediate steps for correction of his date of birth in the service record. These questions and doubts for their proper resolution would require evidence. It is, therefore, obvious that these questions involving disputed facts cannot be gone into in exercise of writ jurisdiction under Article 226 of Constitution of India by this Court. The proper forum for deciding the controversy would be either Central Government Industrial Tribunal or any Court/authority competent in law to decide such an issue. It then follows that this petition cannot be

entertained.

7. In the circumstances, with liberty to approach competent forum as per law, writ petition stands dismissed. No order as to costs.

Judge

Judge

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