

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

WRIT PETITION NO.9674 OF 2015

Between:

Md. Afzal

..... PETITIONER

And

The Singareni Collieries Co.Ltd.,Kothagudem, Khammam
Rep.by its Managing Director and three others

.....RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: 19.08.2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE R. KANTHA RAO

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| 1 | <u>Whether Reporters of Local newspapers
may be allowed to see the Judgments?</u> | <u>Yes/No</u> |
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| 2 | - <u>Whether the copies of judgment may be
marked to Law Reports/Journals</u> | <u>Yes/No</u> |
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| 3 | - <u>Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment?</u> | <u>Yes/No</u> |

THE HON'BLE SRI JUSTICE R.KANTHA RAO

WRIT PETITION No.9674 of 2015

ORDER:

Heard the learned counsel appearing for the petitioner and the learned Standing Counsel appearing for the respondents.

2. The petitioner was appointed in the respondents' Company as badli filler on 19.07.1981. He secured promotions and ultimately he was working as EP Operator at JK OC, Yellandu area on the date of his proposed retirement. The version of the petitioner is that he studied up to 10th class (failed) and he produced a copy of the school leaving certificate dated 25.01.1979 issued by the Head Master at the time of his initial appointment wherein his date of birth was recorded as 07.02.1963. He was under the bona fide impression that the same date of birth which is recorded in the 10th class (failed certificate) was mentioned in the service records and he would retire from service on attaining the age of superannuation basing on the date of birth which was recorded as 07.02.1963 in the said certificate.

i) It is submitted by the petitioner that there was a wrong description of his father's name as Khaja Moinuddin instead of Khajamiya which was recorded in his educational certificates. He applied on 28.07.1992 to the respondents' Company to correct his father's name by enclosing notarized affidavit as per procedure and his father's name was corrected on the representation. It is further submitted that to his utter surprise, one year advance notice dated 13.05.2014 for retirement was issued to him by the company stating that as per the company records he would attain the age of superannuation on 26.06.2015 and he shall retire on 01.07.2015. On that he submitted representations to the respondents stating that as per the transfer certificate, dated 25.01.1979, his date of birth was recorded as 07.02.1963. These certificates were issued prior to the joining of his service with the respondents. The respondents after receiving the representation informed the petitioner that the competent authority approved his date of birth as

27.06.1955 and he will have to retire on 01.07.2015. The version of the petitioner is that there is no dispute about the fact that he studied up to 10th class. The S.S.C. certificate was issued during October, 1982 and the said certificates such as transfer certificate dated 25.01.1979 and the copy of marks memo for April, 1979 issued by the board clearly shows that his date of birth is 07.02.1963. The approval proceedings issued by the respondents dated 11.12.2014 were never served or informed to the petitioner, he made a detailed representation dated 10.11.2014 which was submitted on 31.12.2014 and requested the respondents to consider the date of birth recorded in the certificates which was issued prior to joining into service. The respondents did not consider the same and they were proceeding to retire him as per notice dated 13.05.2014.

ii) Under these circumstances, the petitioner filed the present writ petition seeking writ of mandamus declaring the action of the respondents in approving the petitioner's date of birth as 27.06.1955 instead of 07.02.1963 as on the date of appointment i.e. on 19.07.1981 as per the school leaving certificate dated 25.01.1979, marks memo of April, 1978, thereby seeking to retire from service on 27.06.2015 through one year advance notice dated 13.05.2014 for retirement, scheduled as 01.07.2015 with a view to depriving him to continue in service up to 06.02.2023 as illegal, arbitrary, contrary to the rules of the respondents company and also in violation of Articles 14 and 19 of the Constitution of India, consequently to direct the respondents to continue the petitioner in service up to 06.02.2023 duly correcting the date of birth as 07.02.1963 and to pass necessary orders.

3. The respondents filed counter affidavit contending *inter alia* as follows:

i) The petitioner comes under the definition of 'workman' under Industrial Disputes Act, 1947 and he got an efficacious and alternative remedy by raising a dispute under the said Act and therefore, the writ petition is not maintainable. As per the Implementation Instruction No.76 of the Joint Bipartite Committee for Coal Industry (JBCCI for short) which was circulated

through circular dated 01.08.1988, when no evidence showing the date of birth is produced at the time of initial appointment, the appointee will be referred to the Colliery Medical Officer and the Colliery Medical Officer upon examining him and upon considering the documents if any available at the time of appointment will determine the date of birth which shall be treated as correct date of birth and the same will not be altered under any circumstances. It is further contended that when there is no variation in records, such cases will not be reopened unless there is glaring and apparent error brought to the notice of the management, the management after being satisfied on the merits of the case will take appropriate action for correction through age determination committee/medical board. In the present case it is submitted that the petitioner did not produce any documentary evidence at the time of his initial appointment. As per the Clause A-iv in Implementation Instruction No.76 of the JBCCI, as the petitioner failed to produce documentary or any other evidence at the time of joining the company, the petitioner's age recorded as 26 years as on 27.06.1981 in authentic service records such as identity and service book and other record has to be taken into consideration. The petitioner did not produce any documentary evidence in support of his age at the time of initial medical examination and as such, the then Colliery Medical Officer had assessed his age as 26 years as on 27.06.1981 and the same was recorded in all service records and the petitioner had affixed his thumb impression as a token of acceptance. The assertion made by the petitioner that on his representation his father's name was corrected as Khajamiya instead of Khaja Moinuddin and that the certificate was acquired by him in the year 1982 i.e. after his date of appointment, the same cannot be taken into consideration as per JBCCI guidelines.

ii) Nextly, it is submitted that the petitioner was well acquainted with the date of birth vide letter dated 23.12.2012 and as a token thereof, the petitioner has affixed his signature on 25.12.2012 and that in all periodical medical examinations held in the respondents' company, the date of birth was

mentioned and the same was noticed by the petitioner. On receipt of representation made by the petitioner, the petitioner was referred to Area Age Determination Committee for examination and the committee verified all the records available with the respondents' company and concluded that as there is no glaring disparity in the age recorded in the company records and the apparent age of the petitioner had confirmed the age of the petitioner as 26 years as on 27.06.1981 i.e. date of birth as 27.06.1955 and the decision of the committee was informed to the petitioner vide letter dated 16.12.2014 and the petitioner has acknowledged the receipt of the same on 22.12.2014. Therefore, there is no force in the contention that the respondents have unilaterally altered the service records. According to the respondents, there is no alterations in the company records such as identity and service card, B.Register, CMPF nomination form A and initial medical examination form etc.

iii) It is submitted by the respondents that the respondents company has intimated the date of birth to the petitioner vide letter, dated 23.12.2012 and the petitioner acknowledged the same on 25.12.2012 and the petitioner attended before the Area Age Determination Committee on 03.09.2014 and the petitioner was informed of the proceedings of committee vide letter dated 16.12.2014 and the petitioner acknowledged the same on 22.12.2014 as a token of acceptance and affixed his signature. Thus, the respondents contended that the petitioner to have undue advantage to continue in service, invoked the jurisdiction of this Court under Article 226 of the Constitution of India long after joining in to service and therefore, he is not entitled for the relief of correction of date of birth as per the law laid down in respondents company. The respondents therefore sought to dismiss the writ petition.

4. The petitioner filed the present writ petition in March, 2015 after he was served with one year advance notice dated 13.05.2014 directing him to retire on 01.07.2015 and the petitioner did not produce any reliable evidence to show that within a reasonable time after joining into service, he disputed the date of birth recorded in the service records. Therefore, there is

inordinate delay on the part of the petitioner in approaching this Court invoking the jurisdiction under Article 226 of the Constitution of India seeking correction of date of birth. The petitioner, however, relied on **BASANTI PRASAD v. CHAIRMAN, BIHAR SCHOOL EXAMINATION BOARD AND OTHERS**^[1] wherein it is held that when the delay is satisfactorily explained in approaching the Court and when there is no third party rights are involved, it is not proper to dismiss the writ petition on the ground of delay/laches. The facts of the said decision are entirely different from the facts of the present case. In the case before the Apex Court, the widow of the employee challenged the termination order passed against the employee on the ground that the same was illegal and passed without following the procedure and without conducting any disciplinary proceedings. Therefore, the ratio laid down by the Supreme Court in the said case cannot be made applicable to the facts of the present case.

5. Before appreciating the rival contentions, it could be necessary to refer to the following decisions of the Apex Court:

i) **STATE OF MADHYA PRADESH AND OTHERS v.**

PREMLAL SHRIVAS^[2] wherein the Supreme Court held as follows:

“Change of date of birth in service record at fag end of career can be permitted only in exceptional cases, on irrefutable proof. The Court or tribunal should be loath to allow correction of date of birth in service record of incumbent at fag end of his career unless it is satisfied by irrefutable proof of date of birth and that real injustice has caused to incumbent and claim is in accordance with procedure prescribed. Circumspection, caution and carefulness must be observed. The government servant cannot claim as a matter of right the correction of date of birth in service record after lapse of time fixed by employer, even if he has good evidence to establish erroneous entry – On facts held, High Court committed manifest error in allowing change of date of birth after lapse of over two

decades notwithstanding that no period for filing such application was prescribed.”

ii) In **STATE OF TAMIL NADU v. T.V.VENUGOPALAN**^[3] the Hon'ble Supreme Court held as follows:

“That when date of birth recorded after entry into the service and countersigned by the government servant, it would not be permitted to be challenged by the government servant at the fag end of the service.”

6. In the instant case, the specific contention of the respondents is that the petitioner did not produce any documentary evidence showing his date of birth at the time of his initial appointment and therefore, he was sent for medical examination and on the said basis, his date of birth was determined and the same has been recorded in the service and other related records. Obviously there is no variation in the records maintained by the respondents company. In such an event, as per the JBCCI guidelines, the respondents company will not undertake any exercise regarding the correction of date of birth. If the petitioner really produced any documents showing his date of birth, the same would have been entered in the service record of the petitioner. The petitioner obtained secondary school certificate in the year 1982 i.e. after his date of appointment and therefore, the same was not rightly taken into consideration as per the JBCCI guidelines. The petitioner did not make any representation regarding the correction of his date of birth till he received the one year retirement notice dated 30.05.2014 directing him to retire on 01.07.2015. As the representation made by him was rejected, the petitioner filed the present writ petition in March, 2015. The petitioner having rendered service for more than two decades is not supposed to contend that he is not aware of the actual date of birth entered in the service records. The respondents asserted in their counter that the petitioner is informed about the date of birth entered in service record vide letter dated 23.12.2012 and in token thereof, he has affixed his signature on 25.12.2012. It is further contended by them that in all the periodical medical examinations held by the

respondents company, the date of birth of the petitioner was mentioned and the same is well within the knowledge of the petitioner. Further, there is no glaring discrepancy in the age recorded in the company records and therefore, as per the JBCCI guidelines, the issue relating to date of birth of the petitioner cannot be reopened. Since the petitioner raised the issue of date of birth in the present writ petition at the fag end of the service, this Court will not exercise its jurisdiction under Article 226 of the Constitution of India to grant relief of correction of date of birth.

7. For what all stated hereinabove, there are no merits in the writ petition and accordingly, the writ petition is dismissed. There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

R.KANTHA RAO,J

Date: 19.08.2015

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THE HON'BLE SRI JUSTICE R.KANTHA RAO

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[\[1\]](#) (2009) 6 SCC 791
[\[2\]](#) (2011) 9 SCC 664
[\[3\]](#) 1994 (6) SCC 302