

THE HON'BLE SRI JUSTICE DILIP B. BHOSALE
AND
THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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WRIT APPEAL No.1626 of 2014

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JUDGMENT: (Per Hon'ble Sri Justice A.Ramalingeswara Rao)

Heard the learned Counsel for the appellant and the learned Standing Counsel for the respondents.

This Writ Appeal is directed against the order of the learned single Judge in W.P.No.13428 of 2014 dated 05.08.2014 dismissing the Writ Petition filed by the appellant/writ petitioner.

The appellant filed the Writ Petition challenging the notice dated 18.07.2013 on the ground that the said notice had reduced the service of the appellant by five years one month. By the said notice, the respondents issued one year advance notice prior to his retirement on 31.07.2014 on attaining the age of 60 years.

The record in the appeal discloses that the appellant was appointed as Badli Filler in the year 1979. Later on he was made a permanent employee by the respondents. He states that he studied 2nd to 4th classes in Government School, Karimnagar, from 1971 to 1973 under admission No.211 and his date of birth was recorded in the school records as 04.08.1959. He states that he submitted the said date of birth certificate recorded in the school register at the time of recruitment. He further stated that at the time of recruitment he was sent for medical examination and his finger impressions and signatures were taken in a blank book stating that they would be filled up later. He was under the impression that the respondents have recorded all particulars correctly including the date of birth from the certificate submitted by him. He came to know about the wrong recording of his date of birth only when a notice was issued to him on 18.07.2013 informing the date of retirement. During his service he was posted at various mines and at the time of filing the

Writ Petition he was working as Munshi. In normal course he would have retired from service on 03.08.2019 and, as such, he filed the above Writ Petition challenging the notice issued by the respondents giving one year notice prior to the date of retirement. The appellant relied on a circular dated 25.04.1988, which laid down the procedure in the case of disputed age.

The respondents filed a counter affidavit stating that the appellant comes under the definition of 'workmen' under the provisions of the Industrial Disputes Act, 1947 and thus, he got an effective alternative remedy. The appellant was appointed as Worker Trainee on 29.08.1979 at Gdk.10 Incline and subsequently was promoted as Munshi and was working at Gdk.2A Incline, RG.I Area. The appellant's assertion that he produced study certificate containing the date of birth at the time of appointment was specifically denied. The Identity & Service Card that was issued to the appellant also shows that he was aged 25 years as on 31.07.1979 and the educational qualifications of the appellant were recorded as nil. In the normal circumstances every person entering into respondents' service shall have to declare his date of birth by submitting necessary proof/record at the time of initial appointment. But, in case of illiterates, the age assessed/determined by the then Colliery Medical Officer of the respondent company at the time of initial medical examination in accordance with the Mines Rules under the Mines Act, 1952, would be taken into consideration with the consent of the appointee and will be recorded in all the service records. Since the appellant did not submit any documentary evidence as to proof of his age, his age was assessed at the time of initial appointment by the then Colliery Medical Officer as 25 years as on 31.07.1979 and accordingly, a notice was issued stating that he would be retiring from service with effect from 31.07.2014. The allegation that his finger impressions and signatures were obtained in a blank book was denied. The post of Badli Filler does not require any qualifications and hence there was no need to submit educational qualifications at the time of initial appointment and in fact the

appellant did not submit any educational certificates at the time of initial appointment. Based on the initial medical examination his age was assessed as 25 years as on 31.07.1979 and it was entered in all the service records of the appellant, Identity & Service Card, Form 'B' Register, EPR, PS-3, PS-4 and MVTC Training certificates, which are statutory records. Even after issuance of circular dated 25.04.1988, the appellant did not produce any documentary evidence in support of his age/date of birth. Further it was stated that as per circular No.CRP/PER/IR/A/51/2525 dated 12.11.2012, no age dispute which was raised within one year of the due date of retirement would be entertained.

On the basis of the above pleadings, the rival contentions were considered by the learned single Judge including the decisions in **Commissioner of Collegiate Education, Hyderabad v. Narayana Reddy**^[1], **M/s.Bharat Coking Coal Ltd. v. Chhota Birsa Uranw**^[2], **State of T.N v. T.V.Venugopalan**^[3], **Burn Standard Co.Ltd v. Dinabandhu Majumdar**^[4], **State of Madhya Pradesh v. Premlal Shrivastava**^[5] and **G.M., Bharat Coking Coal Ltd. West Bengal v. Shib Kumar Dushad**^[6], and after thorough consideration, the learned single Judge dismissed the Writ Petition by order dated 05.08.2014.

Before us the learned Counsel for the appellant contended that the study certificate containing the age/date of birth was produced at the time of initial recruitment, but the respondents, for the reasons best known to them did not enter the same. She further submitted that the appellant was not aware of the age entered in the records maintained by the respondents till the impugned notice was issued to the appellant.

In order to verify the first assertion, we called for the records from the respondents and also directed the respondents to get instructions with regard to the submission of study certificate at the time of initial

recruitment. Learned Standing Counsel produced the original record and stated that no study certificate was produced at any point of time till the impugned notice was issued on 18.07.2013. We asked the learned Counsel for the appellant to show any evidence in support of the assertion made in the affidavit filed in support of the Writ Petition that the study certificate was produced at the time of initial recruitment. But, she could not substantiate the same. On the other hand, she submitted that the appellant was not aware of the date of birth that was entered in the records of the respondents. From the record that is made available to us this submission is incorrect.

In the certificate issued under the Mines Vocational Training Rules, 1966, the appellant's date of birth/age was mentioned as 25 years as on 31.07.1979. That was prepared on 29.08.1979 as he underwent training from 05.08.1979 to 28.08.1979. In the particulars of family prepared by the department and signed by the appellant, his date of birth was mentioned as 31.07.1954. In the nomination form also the said date of birth was mentioned in words and he signed the same. When the appellant's personal record was computerized on 06.05.1997, he signed the form showing the age as 25 years as on 31.07.1979 indicating the date of birth as 31.07.1954, which was written in words as well as figures.

When a circular was issued on 01.08.1988 by the respondents indicating the procedure for determination/verification of age of the employee and for resolution of disputes, the appellant did not raise any dispute. Even after issuance of the impugned notice on 18.07.2013, the appellant did not submit any representation with regard to his correct date of birth. For the first time in the Writ Petition filed by him in W.P.No.13428 of 2014, the appellant filed a copy of the alleged date of birth certificate issued by the Head Mistress of his school stating that the appellant studied classes II to IV during 1971 and 1973 with admission No.211 dated 13.07.1971 and in the school records his date of birth was

recorded as 04.08.1959.

As already stated above, the appellant was appointed on 29.08.1979 and he did not raise any dispute nor produced any certificate in support of his claim of the date of birth, namely 04.08.1959, till he filed the Writ Petition on 23.04.2014.

Learned single Judge relied on **Commissioner of Collegiate Education, Hyderabad** (supra), wherein it was held that in view of the long service of 36 years and silence regarding date of birth, the belated claim should not be permitted, though there is no statutory period of limitation prescribed for correcting the date of birth. The other decision relied on by the learned single Judge in **G.M., Bharat Coking Coal Ltd. West Bengal** (supra) is directly on the point. In the said case also the date of birth of the respondent therein was entered initially in the Form 'B' register maintained under the Mines Act, 1952, as 1932. He obtained the certificate of Gas Testing and Mining Sirdarship in the year 1973, wherein the date of birth of 09.02.1946 was entered based on the particulars submitted by him and the said date of birth entered in the Form 'B' register was also entered in the said certificate. Thus, when a conflict arose, the matter was referred to the Medical Board and on the basis of the said report, the date of birth was taken as 13.10.1936. But, the employee filed W.P.No.3537 of 1991 before the Calcutta High Court seeking a direction to enter his date of birth as 09.02.1946, placing reliance on the certificate issued in the year 1973. The High Court of Calcutta disposed of the Writ Petition directing the authorities to consider the representation of the employee for correction of his date of birth. When his application was rejected, he filed another Writ Petition in W.P.No.2717 of 1994. He contended before the learned single Judge that if the date of birth determined by the Medical Board is accepted, he would be 14 years when he entered service in 1960 and it is against the minimum age of 18 years prescribed for employment under the Mines Act, 1952. The learned single Judge allowed the Writ Petition, but the

Division Bench modified the order of the learned single Judge ordering the employee to superannuate from service in the year 2004 instead of 2006. The said order was challenged in the Supreme Court. The Supreme Court, while allowing the appeal of the employer observed as follows:

“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 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. In the present case the core question is whether the two certificates subsequently obtained by the respondent on 9.6.1973 and on 3.11.1983 should be accepted and the date of the birth entered therein should be taken as conclusive. This question is essentially one of fact. Determination of the question requires detailed enquiry into relevant factual matters. Without intending to be exhaustive it can be said that some of the relevant aspects to be considered in such a matter is whether the certificates have been issued by an authority competent to issue the same under any statute or statutory rules; whether the authority issuing the certificate is required under the statute or rules to inquire into the question of date of birth of the person before issuing the certificate and on such inquiry the authority has found the date of birth to be as entered in the certificate or the entry has been made merely on the disclosure made by the holder of the certificate. In the former case some sanctity may be attached to the entry regarding date of birth in the certificate though it is not conclusive, in the latter case the entry having been based on a declaration/disclosure made by the holder of the certificate himself without any enquiry on the part of the authority concerned is of little avail when a dispute regarding the date of birth arises for determination. It is relevant to note here that one of the objections raised on behalf of the appellant against the certificates in question is that the certificates were not issued by the Manager of the colliery who was the competent authority in the matter. If the respondent was basing his case on these documents then it was incumbent upon him to place evidence on record materials from which a conclusion can be reasonably drawn that the date of birth as entered in the certificate is the correct one. Similar is the position regarding the document purportedly issued by the Head Master of Adarsh Madhya Vidyalaya in which the respondent is alleged to have studied. This document is stated to be a School Leaving Certificate in which 1946 is entered as the year of birth of the respondent. There is no

material on record to show that when this document was issued to the respondent; he had produced a copy of the same when he entered service in the private colliery (Chirkunda Coal Company) in support of his age and if so why was the document not sent with the service records when the service of the respondent was taken over by the appellant. These are some of the questions consideration of which will depend on the evidence, either oral or documentary to be placed by the parties. The High Court in writ jurisdiction is not the appropriate forum for undertaking such enquiry into disputed questions of fact. At this stage it is relevant to state that if the respondent's date of birth is taken to be 9.2.1946 then he would have been 14 years of age when he joined service in 1960. No material is available on record that the industrial undertaking in which the respondent joined service was legally permitted to employ a minor. Indeed this fact has been taken note of by the Division Bench of the High Court in its judgment and on that basis the Division Bench modified the judgment of the learned single Judge and held that the respondent's date of birth should be so determined as to fit it with the position that the respondent was 16 years of age at the time of joining service. Unfortunately, the judgment of the Division Bench does not discuss any material on the basis of which the court took such a view. Where from the court got 16 years as the minimum prescribed age for joining service is not indicated in the judgment.

The date of birth of an employee is not only important for 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 which 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 materialise, on account of which the junior is denied promotion which he has all along been lead to believe will be his due on the retirement of the

senior.”

After referring to the cases decided in **Secretary and Commissioner, Home Department v. R.Kirubakaran**^[7], **Burn Standard Co. Ltd.** (supra) and **Union of India v. C.Ramaswamy**^[8] it was held that the High Court erred in interfering with the date of birth/age of the employee as determined by the employer, and the appeal was allowed.

We are informed that pursuant to the impugned notice dated 18.07.2013 of the respondents, the appellant retired from service on superannuation with effect from 31.07.2014, pending disposal of the Writ Petition.

Learned single Judge dismissed the Writ Petition on the ground that if the employee contends that he was not made aware of the date of birth entered in service records by preventing access to the records maintained by the management, he has to establish the said fact by adducing reliable and convincing evidence. He also observed that the appellant cannot claim that he produced the certificate containing date of birth at the time of his appointment.

We are in complete agreement with the findings recorded by the learned single Judge and in view of the overwhelming evidence against the appellant, we dismiss the Writ Appeal. The miscellaneous petitions, if any, stand disposed of. No costs.

(DILIP B. BHOSALE, J)

(A.RAMALINGESWARA RAO, J)

02.02.2015
vs

[\[1\]](#) 2006 (5) ALD 492 (DB)

[\[2\]](#) 2014 LAB.I.C 2364

[\[3\]](#) (1994) 6 SCC 302

[\[4\]](#) (1995) 4 SCC 172

[\[5\]](#) (2011) 9 SCC 664

[\[6\]](#) (2000) 8 SCC 696

[\[7\]](#) AIR 1993 SC 2647

[\[8\]](#) AIR 1997 SC 2055 : (1997) 4 SCC 647