

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No.113 of 2014

Judgment reserved on: 5-9-2016

Judgment delivered on: 20-9-2016

1. South Eastern Coalfields Ltd., Through its Chairman-cum-Managing Director, Seepat Road, Bilaspur (C.G.)
2. Chief General Manager, South Eastern Coalfields Ltd., Hasdeo Area, PO South JKD Colliery, Distt. Korea (C.G.)
3. The Sub-Area Manager, South Eastern Coalfields Ltd., Rajnagar (RO), Hasdeo Area, PO Rajnagar Colliery, Distt. Anuppur (M.P.)
4. The Deputy Personnel Manager, South Eastern Coalfields Ltd., Rajnagar R.O. Sub-Area, PO Rajnagar Colliery, Distt. Anuppur (M.P.)

---- Appellants

Versus

Adya Singh, aged about 66 years, Ex Under Ground Loader, R/o Q.No.169, Shanti Nagar, Rajnagar Colliery, Hasdeo Area, Distt. Anuppur (M.P.)

---- Respondents

For Appellants:	Mr. Abhishek Sinha, Advocate.
For Respondent:	Mr. Gary Mukhopadhyay, Advocate.

Hon'ble the Chief Justice and
Hon'ble Shri Justice Sanjay K. Agrawal

Judgment (C.A.V.)

Sanjay K. Agrawal, J.

1. Impugning legality, validity and correctness of the order dated 21-1-2014 passed by the writ court in W.P.(S) No.1957/2008 in exercise of jurisdiction conferred under

Article 226 of the Constitution of India, the appellants herein / South Eastern Coalfields Limited (SECL) have preferred this writ appeal under sub-section (1) of Section 2 of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006. By the impugned order, the writ court has allowed the writ petition directing the appellants / SECL to retain the respondent employee in service by treating his date of birth as 29-1-1956 and also to pay consequential benefits to him by treating his date of birth as 29-1-1956.

Writ Proceedings

2. Shri Adya Singh, the writ petitioner, joined the service with SECL on 2-3-1977 as Piece Rated Loader. At the time of joining service, he declared himself to be illiterate and affixed his thumb impression on official statutory records and further declared his date of birth as 2-3-1948 and thereby the date of retirement is 31-3-2008. Accordingly, his date of birth as 2-3-1948 was recorded in the statutory form B maintained under the rules. In the year 1987, when the service excerpts having all details were provided to him, he again mentioned his date of birth in his service excerpts as 2-3-1948 by putting his signature and accordingly it was corrected. In the year 1998, PS-3 and

PS-4 forms were also filled in by Shri Adya Singh, the writ petitioner, in which he has shown his date of birth as 2-3-1948 and signed the forms. It is only in the year 2004, for the first time, the writ petitioner raised an objection disputing his date of birth stating that his date of birth is 29-1-1956 substantiating his claim by filing a high school marks sheet of Madhyamik Shiksha Parishad, Uttar Pradesh, Allahabad in which his date of birth was not mentioned and also filed transfer certificate. The SECL did not accede to the request of the respondent employee herein finding no merit.

3. The writ petitioner – employee in the year 2006, preferred a writ petition bearing W.P.No.2852/2006 seeking correction of his date of birth and relied upon character certificate, copy of school register and transfer certificate to support his plea that his date of birth is 29-1-1956. This Court by its order dated 21-11-2007 disposed of the writ petition directing the SECL to refer the matter to the age determination committee as per the procedure laid down in Implementation Instruction No.76 and to resolve the dispute regarding age of the petitioner (therein) within three months.

4. Thereafter, the SECL by its order dated 17-3-2008

(Annexure P-1 with the writ petition), after due enquiry by the age determination committee, held that date of birth of the respondent employee is 2-3-1948 as recorded in the statutory form B. Feeling aggrieved against the order of the SECL dated 17-3-2008, W.P.(S) No.1957/2008 was filed by the respondent employee questioning the said order and relied upon (i) the marks sheet issued by Madhyamik Shiksha Parishad, Uttar Pradesh, Allahabad (Annexure P-2 with the writ petition) in which no date of birth was recorded; and (ii) Scholar's Register & Transfer Certificate Form (Annexure P-3 with the writ petition) issued on 23-11-1992 by the Panchayat Inter College, Bodarbar, Devaria. It has been further pleaded that the said certificates were verified by the SECL from the Panchayat Inter College, Bodarbar, Devaria, and it has been held to be issued by the said College in accordance with law and therefore his date of birth be corrected as 29-1-1956 as per Implementation Instruction No.76 which laid down the procedure for determination of age of the existing employee.

5. Return was filed on behalf of the SECL in the writ petition stating inter alia that the writ petition as framed and filed was not maintainable in law, as the petitioner was superannuated from 31-3-2008 on the basis of date of birth

entered in his service records and on the date of retirement he preferred writ petition i.e. on 31-3-2008 which suffers from delay and laches and thus, the writ petition filed at the far end of service is not maintainable. It was further pleaded that the age determination committee was constituted in deference to the order passed by this Court in W.P.No.2852/2006 for resolving the dispute in respect of correction of date of birth filed by the writ petitioner. The age determination committee having already examined the case and the date of birth duly examined and held to be 2-3-1948 cannot be interfered with as the writ court would not sit over the decision of the fact finding body i.e. the age determination committee unless the decision-making process of the said committee suffers from infirmity, it is arbitrary or violative to the procedure contained in Implementation Instruction No.76 which provides detailed procedure to be followed for determination of age of existing employees and therefore, the writ petition deserves to be dismissed.

Judgment of the Writ Court

6. The writ court after giving opportunity of hearing to both the parties and opportunity to exchange the pleadings to both of them, by the impugned order held that the writ petitioner

joined the service in 1977 whereas the high school certificate was issued in 1974 therefore, the writ petitioner's case squarely falls within the sweep of clause (B) (i) (a) of Implementation Instruction No.76 and thereby held that the age determination committee approved by the SECL has committed a serious error of law by not correcting the date of birth of the writ petitioner to be 29-1-1956 and thereby quashed the order of the age determination committee of the SECL and directed the SECL to treat the date of birth of the writ petitioner as 29-1-1956 and to pay the entire arrears of salary/consequential benefits to him.

Writ Appeal

7. Feeling dissatisfied and aggrieved against the judgment of the writ court, this writ appeal has been filed by the SECL principally, on the ground that the documents relied upon by the writ petitioner and accepted by the writ court i.e. the high school examination certificate issued by Madhyamik Shiksha Parishad, Uttar Pradesh, Allahabad and the Scholar's Register & Transfer Certificate Form issued by the Head Master of the Panchayat Inter College, Bodarbar, Devaria, are firstly not an earmarked document contained in clause (B) (i) (a) of Implementation Instruction No.76. It was secondly contended that these two documents were

not issued prior to the date of writ petitioner's appointment. In the first document i.e. the high school certificate, no date of birth has been mentioned and it is stated to be issued on 29-7-2005 and the second document was also issued on 23-11-1992. Therefore, the documents, for the above stated two reasons, could not have been relied upon by the writ court to issue a writ in favour of the writ petitioner holding the date of birth to be 29-1-1956. It is the further ground of the appellants / SECL that the writ court in exercise of its jurisdiction under Article 227 of the Constitution of India could not have interfered with the determination of age by the age determination committee which is a fact finding body as such, the scope of interference is extremely limited and restricted and therefore, the writ court is unjustified in interfering with the finding of the age determination committee with regard to determination of date of birth of the writ petitioner.

Contentions

8. Mr. Abhishek Sinha, learned counsel appearing for the SECL and its authorities, would vehemently submit that the learned writ court has committed a grave legal error in accepting the high school marks sheet issued by Madhyamik Shiksha Parishad, Uttar Pradesh, Allahabad

and the Scholar's Register & Transfer Certificate Form issued by the Head Master of the Panchayat Inter College, Bodarbar, Devaria, for two reasons, as both are not the documents enumerated in clause (B) (i) (a) of Implementation Instruction No.76 and secondly, that both were not issued prior to the date of employment of the writ petitioner, as Annexure P-2 was issued on 29-7-2005 and Annexure P-3 was issued on 23-11-1992, whereas the above stated clause of the Implementation Instruction requires that both must be issued prior to the date of employment. He would further submit that there is no arbitrariness or infirmity shown in the procedure followed by the age determination committee while determining the date of birth of the writ petitioner, therefore, the writ court could not have interfered with the merits of the decision made by the age determination committee and could not have thereby allowed the writ petition filed by the writ petitioner and thus, committed a grave legal error in interfering with the order of the age determination committee. Therefore, the impugned order deserves to be set aside and the writ appeal deserves to be allowed.

9. Mr. Gary Mukhopadhyay, learned counsel appearing on behalf of the respondent employee / writ petitioner, vehemently opposing the writ appeal and countering the

submission made by Mr. Sinha, would submit that the learned writ court is absolutely justified in interfering with the date of birth recorded by the age determination committee as the said committee failed to take into account the high school certificate issued by the said Board in 1974 and the writ petitioner's case has rightly been held to be falling within the sweep of clause (B) (i) (a) of Implementation Instruction No.76. He would further submit that when the finding of the age determination committee is based ignoring the relevant document available on record, the decision of the age determination committee can certainly be interfered with and the writ court finding the decision of the age determination committee to be based on ignoring the relevant documents on record rightly interfered with the same in which no interference is called for in exercise of writ appeal jurisdiction and as such, the writ appeal deserves to be dismissed.

10. We have heard learned counsel for the parties at considerable length and considered their vehement submissions made herein-above and also gone through the record extensively.

Discussion and consideration

11. In order to consider the plea raised at the Bar, it would be appropriate to notice the relevant provision contained in Implementation Instruction No.76 which is a part of National Coal Wage Agreement III and which provides procedure for determination/verification of the age of the employees, and for resolution of disputed cases of Service Records, framed by the Joint Bipartite Committee for the Coal Industrial of Coal India Limited. In Implementation Instruction No.76, the procedure is divided in two parts, Para (A) provides for Determination of the age at the time of appointment whereas Para (B) provides for Review/determination of date of birth in respect of existing employees. In order to consider the plea raised at the Bar, it would further be appropriate to reproduce Para (A) (ii) which provides for determination of the age at the time of appointment. It reads as follows: -

“ii) Non-matriculates but educated.

In the case of appointees who have pursued studies in a recognised educational institution, the date of birth recorded in the School Leaving Certificate, shall be treated as correct date of birth and the same will not be altered under any circumstances.”

12. Para (B) of Implementation Instruction No.76 provides for Review/determination of date of birth in respect of existing employees which we are concerned here. Para (B) (i) (a)

of the said Instruction reads as follows: -

“i) (a) In the case of the existing employees Matriculation Certificate or Higher Secondary Certificate issued by the recognised Universities or Board or Middle Pass Certificate issued by the Board of Education and/or Department of Public Instruction and admit cards issued by the aforesaid Bodies should be treated as correct provided they were issued by the said Universities / Boards / Institutions prior to the date of employment.”

13.A careful and critical reading of Para (B) (i) (a) of Implementation Instruction No.76 would show that in case of existing employees, following documents issued prior to the date of employment shall be treated as correct: -

1. Matriculation certificate.
2. Higher Secondary Certificate issued by the recognized University or Board.
3. Middle Pass Certificate issued by the Board of Education and/or Department of Public Instruction.
4. Admit cards issued by the aforesaid Bodies.

Thus, four kinds of documents are deemed to be correct if they are available and they must have been issued by the said University, Board or Institution prior to the date of employment.

14.Their Lordships of the Supreme Court in the matter of **Eastern Coalfields Limited and others v. Bajrangi**

Rabidas¹ noticing the above-stated clause in Implementation Instruction No.76 have clearly held that date of birth recorded in Matriculation or Higher Secondary Examination is to be accepted as authentic.

15.This would bring us to the facts of the present case.

Undisputedly, the writ petitioner placed reliance upon two documents. The first one, as stated herein-above, was issued by Madhyamik Shiksha Parishad, Uttar Pradesh, Allahabad (Annexure P-2 with the writ petition). The said certificate certifies that the writ petitioner has obtained marks in the High School Examination, 1974 but it has been issued on 29-7-2005 whereas the writ petitioner had joined the service on 2-3-1977. In this certificate, there is no date of birth recorded by the said Board or the school and it was issued after the date of his employment, as the date of employment is 2-3-1977 and it was issued on 29-7-2005. So this document is of no use / help to the petitioner. The second document is Scholar's Register & Transfer Certificate Form (Annexure P-3 with the writ petition) issued on 23-11-1992 by the Panchayat Inter College, Bodarbar, Devaria in which the writ petitioner's date of birth was recorded as 29-1-1956. Again this document is not one of the documents enumerated in Para

¹ (2014) 13 SCC 681

(B) (i) (a) of Implementation Instruction No.76. It is neither Matriculation Certificate nor Higher Secondary Certificate issued by the recognized University or Board or Middle Pass Certificate issued by the Board of Education and / or Department of Public Instruction and admit card issued by the aforesaid Bodies. Therefore, the date of birth recorded in this document cannot be treated to be correct. The writ petitioner has placed reliance on the aforesaid document by holding that it has been certified to be true by the Panchayat Inter College, Bodarbar, Devaria. The document Annexure P-5 (with the writ petition) issued by the Panchayat Inter College, Bodarbar certifies that in the transfer certificate sent for verification, date of birth has been recorded as 29-1-1956 and in the marks sheet dated 8-7-1974, date of birth has also been recorded as 29-1-1956. Those documents have been filed as Annexures P-5 and P-6. These documents cannot be accepted on two grounds; firstly, verification has been obtained not from the concerned Board i.e. in which the writ petitioner is said to have appeared in the examination held by Madhyamik Shiksha Parishad, Uttar Pradesh, Allahabad and secondly, it was issued much after the writ petitioner has joined service. It has already been noted above that transfer certificate is not an earmarked document in Para (B) (i) (a)

of Implementation Instruction No.76. Even verification has not been made from the Board or University, but it has been verified by the concerned College and as such, it cannot be accepted to be the basis by which it can be held that the finding recorded by the age determination committee is incorrect. On the basis of aforesaid discussion, we are unable to concur with the view taken by the learned writ court holding the date of birth of the writ petitioner to be 29-1-1956.

Scope of interference in the finding of the Age Determination Committee

16. Way back in the year 2000, in the matter of **G.M., Bharat Coking Coal Ltd., West Bengal v. Shib Kumar Dushad and others**², Their Lordships of the Supreme Court held that once enquiry is made by the age determination committee following the procedure laid down in Implementation Instruction No.76 then the scope of interference by the writ court is quite limited and the High Court should not interfere with the date of birth as determined by the employer / SECL and issue a writ of mandamus i.e. claimed by the employee. Paragraphs 17, 18, 19, 20 and 24 of the report read as follows: -

“17. The date of birth of an employee is not only important for employee but for the

2 (2000) 8 SCC 696

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, 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 led to believe will be his due on the retirement of the senior.

18. At this stage we may take note of certain instructions which were issued by the appellant laying down the procedure for determination/modification of date of birth of employee. The document is styled as:

"Implementation Instruction No.76

Procedure for Determination

Verification of Age of Employees".

19. Its authenticity is not disputed by the parties. Indeed the respondent employee has filed this document as Annexure R-7 to the counter-affidavit filed in this court. Under para 'A' the manner of determination of age at the time of appointment is laid down. Under para 'B' are laid down the procedures to be followed in cases of determination of date of birth in respect of existing employees. Under sub-para (i) of para 'B' the case of the existing employee having a Matriculation Certificate or Higher Secondary Certificate issued by the recognised University or Board or Middle Form Certificate issued by the Board of Education and/or Department of Public Instruction should be treated as the correct date of birth provided the documents are issued by the University/Board prior to the date of the employment. Under sub-para (i)(b) of para 'B' it is provided that mining sirdarship, wind up engine or similar other statutory certificate where the Manager had to certify the date of birth will be treated as authentic. Provided that where both the documents mentioned in (i)(a) and (i)(b) above are available the date of birth in (i)(a) will be treated as authentic. In clause (ii) of para 'B' it is specifically stated that wherever there is no variation in records such cases will not be reopened unless there is a very glaring and apparent wrong entry brought to the notice of the management. The management, after being satisfied on the merit of the case will take appropriate steps for corrections through the Age Determination Committee/Medical Board. In 'C', 'D' and 'E' the procedures to be followed by the Age Determination Committee/Medical Board for determination of age of an employee are laid down. The provisions read as follows:

"(C) Age Determination Committee/Medical Board for the above will be constituted by the management. In the case of employees whose date of birth cannot be determined in accordance with the procedure mentioned in (B)(i)(a) or (B)(i)(b) above, the date of birth recorded

in the records of the Company, namely, Form 'B' register, CMPF Record and Identity Cards (untampered) will be treated as final, provided that where there is a nomination in the age recorded in the records mentioned above, the matter will be referred to the Age Determination Committee/Medical Board constituted by the management for determination of age.

(D) Age determination: by the Age Determination Committee/Medical Board referred to above may consider their evidence available with the colliery management; and/or

(E) Medical Board constituted for determination of age will be required to manage (*sic* assess) the age in accordance with the requirement of medical jurisprudence and the Medical Board will as far as possible indicate the accurate age assessed and not approximately."

20. From the provisions in the instructions referred to above, it is clear that in case of dispute over the date of birth of an existing employee who has neither a Matriculation Certificate/Secondary School Certificate nor a statutory certificate in which the Manager has certified the entry regarding the date of birth to be authentic the employer is to refer the matter to the Medical Board. Therefore, no fault can be found with the action taken by the appellant to refer the case of the respondent to Medical Board. The Medical Board as laid down in the instructions is to consider the matter on the evidence available with the colliery management and in accordance with the requirement of medical jurisprudence. As noted earlier, in the present case the Medical Board determined the age of the respondent to be 52 years in 1988 and the employer (appellant) accepted such determination. In the circumstances there was hardly any scope for the High Court to interfere with the date of birth as determined by the employer (appellant herein) and issue a writ of Mandamus that the

date as claimed by the employee (the respondent herein) should be accepted.

24. On the analysis and the discussions in the foregoing paragraphs, we have no hesitation to hold that the High Court erred in interfering with the date of birth/age of the respondent as determined by the appellant. Accordingly, the appeal is allowed. The judgment of the Single Judge in Writ Petition No.2717 of 1994 and the judgment of the Division Bench, confirming the judgment of the Single Judge with a modification, are set aside. Writ petition stands dismissed. ...”

17.Mr. Gary Mukhopadhyay, learned counsel for the respondent employee, has placed reliance upon the decision rendered by the Supreme Court in the matter of **Bharat Coking Coal Limited and others v. Chhota Birsa Uranw**³. The aforesaid judgment was delivered on its own facts and it was held as under in paragraph 7: -

“7. On the basis of the above, we find that within the given set of facts the dispute is regarding the manner in which the date of birth should be determined; whether the reliance should be placed on the set of records being the Mining Sardar Certificate and the school leaving certificate which state the date of birth to be 6-2-1950 or reliance should be placed on the extracts of the Form B register which state the date of birth to be 15-2-1947. The position which emerges on the basis of the above is that after having joined service in 1973 when the Form B register was filled and when it was filled once again in 1983 when the respondent was transferred, there were certain discrepancies regarding permanent address, father's name and date of joining. In 1987, when the appellant made available the details of all employees for verification of service

records, the respondent raised the dispute regarding his incorrect particulars being the date of joining, father's name, permanent address and date of birth. Apparently, the abovementioned corrections other than date of birth were made. Thus, it is evident and correctly determined by the learned Single Judge that the dispute was not raised at the fag end of service or on the eve of superannuation but it was raised at the earliest possible opportunity in 1987 when the respondent became aware of the discrepancy. As the factum of when the dispute was raised is settled what remains to be determined is the issue of date of birth.”

18. From the above legal analysis, it appears that date of birth of a person is a question of fact. If there are conflicting dates of birth on the basis of material placed at different times by the employee himself, it becomes a disputed question of fact and once it is examined by the appropriate committee, as in this case the age determination committee, as per Implementation Instruction No.76 under the National Coal Wage Agreement III relating to age of existing employees which is a binding document between the parties and which determines age of the particular employee, and in absence of documents earmarked under Para (B) (i) (a) of Implementation Instruction No.76, the writ court could not interfere with the decision of the age determination committee duly accepted by the employer / SECL in absence of infirmity in the decision-making process of the age determination committee, which is a

fact finding body, as the jurisdiction of the writ court is confined to the decision-making process and it cannot interfere with the ultimate decision taken by the age determination committee.

Conclusion

19. We do not find any infirmity in the decision-making process undertaken by the age determination committee with the order dated 17-3-2008 (Annexure P-1 with the writ petition), as the age determination committee has taken into consideration the relevant documents while reaching to such conclusion and as such, we are unable to persuade ourselves to accept the conclusion recorded by the learned writ court and we hereby set aside the order passed by the learned writ court. Resultantly, the writ petition would stand dismissed leaving the parties to bear their own costs.

20. The writ appeal is allowed to the extent indicated herein-above.

Sd/-
(Deepak Gupta)
Chief Justice

Sd/-
(Sanjay K. Agrawal)
Judge