

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 122 of 2014

1. Smt. Sonkun @ Sonkunwar, W/o Late Vishnu Prasad, Aged about 50 Years,
2. Lalan Kumar S/o Late Vishnu Prasad, Aged about 20 Years,
Both are R/o Village Nonera, Post Khamriya, Tahsil & P.S. Udaipur,
Civil & Revenue Distt. Surguja (C.G.)

---- Appellants

Versus

1. South Eastern Coal Fields Ltd., Through The Chairman - Cum - Managing Director, Seepat Road, Bilaspur (C.G.)
2. Chief General Managar, SECL Bishrampur Area, Distt. Surajpur (C.G.)
3. The Personal Manager, South Eastern Coal Field Limited, Bishrampur Area, Distt. Surajpur (C.G.)
4. Smt. Balmati W/o Lalta Prasad, Aged about 35 Years, R/o Village Podi, Post Devnagar, P.S. & Tahsil Devnagar, Civil & Revenue Distt. Surajpur (C.G.)
5. Smt. Bhageshwari @ Bageshwari W/o Kannilal, Aged about 27 Years, R/o Village Ramnagar, P.S. & Tahsil Bishrampur, Civil & Revenue Distt. Surajpur (C.G.)
6. Smt. Bhuneshwari W/o Gudda, Aged about 25 Years, R/o Village Bhadwahi, P.S. & Tahsil Khamhariya, Civil & Revenue Distt. Surguja (C.G.)
7. Smt. Rita W/o Chandel, Aged about 23 Years, R/o Village Rajapur, P.S. Jainagar, P.O. Sukhari, Civil & Revenue Distt. Surguja (C.G.)
8. Anand Kumar S/o Late Vishnu Prasad, Aged about 18 Years,
9. Ku. Mamta D/o Late Vishnu Prasad, Aged about 15 Years (Minor) through guardian mother – appellant No.1

Respondents No.8 & 9 are R/o Village Nonera, Post Khamhariya, P.S. Udaipur, Civil & Revenue Distt. Surguja (C.G.)

---- Respondents

And

WA No. 234 of 2014

1. South Eastern Coalfields Limited, Through The Chairman-cum-Managing Director, Seepat Road, Bilaspur (C.G.)
2. The Chief General Manager, South Eastern Coalfields Limited, Vishrampur Region, District Korea (C.G.)

3. The Personnel Manager, South Eastern Coalfields Limited,
Vishrampur Region, District Korea (C.G.)

---- Appellants

Versus

1. Smt. Sonkun Wd/o Late Vishnu Prasad, Aged about 59 years, R/o Village Nonera, Post Khamaria, P.S. Udaipur, District Surguja (C.G.)
 2. Smt. Balmati, W/o Lalta Prasad, Aged about 44 years, R/o Village Podi, District Devnagar, Distt. Surguja (C.G.)
 3. Smt. Bhageshwari, W/o Kannilal, Aged about 36 years, R/o Village Ramnagar, P.S. Vishrampur, Distt. Surguja (C.G.)
 4. Smt. Bhuneshwari W/o Guda, Aged about 34 Years, R/o Village Bhadwahi, P.S. Khamaria, Distt. Surguja (C.G.)
 5. Smt. Rita W/o Chandel ,Aged about 32 Years, R/o Village Rajapur, P.S. Jainagar, P.O. Sukhari, Distt. Surguja (C.G.)
 6. Lalan Kumar S/o Late Vishnu Prasad, Aged about 29 years,
 7. Anand Kumar S/o Late Vishnu Prasad, Aged about 27 Years,
 8. Ku. Mamta D/o Late Vishnu Prasad, Aged About 24 Years,
- Respondents No.6 to 8 are R/o Village Nonera, Post Khamaria, P.S. Udaipur, Distt. Surguja (C.G.)

--- Respondents

For Appellants in W.A.No.122/2014 and for Respondents No.1 and 6 in W.A.No.234/2014: Shri Dashrath Prajapati, Advocate on behalf of Shri A.K. Shukla, Advocate.

For SECL in W.A.Nos.122/2014 and 234/2014: -
Shri H.B. Agrawal, Senior Advocate with
Mrs. Iturani Mukherjee, Advocate.

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri Justice Sanjay K. Agrawal

JUDGMENT ON BOARD

30/08/2016

1. Both the appeals are being disposed of by common judgement since they both arise out of the same judgement dated

09-01-2014 delivered by learned single judge of this Court in Writ Petition No.6200 of 2005.

2. Briefly stated facts of the case are that the original petitioner Vishnu Prasad was working as labourer in the South Eastern Coalfields Limited. At the time when he was employed, his date of birth was recorded as 01-10-1943. The petitioner was to retire on attaining the age of superannuation i.e. 60 years. However, he opted to seek retirement and he was accordingly retired on 29-02-2003. Thereafter, the petitioner filed a Writ Petition No.3178/2003 in which he claimed that in fact his date of birth was wrongly recorded as 01-10-1943 and his actual date of birth was 01-09-1951. Vide order dated 07-06-2004, this Court disposed of the writ petition with a direction to the respondents to refer the matter to the Age Determination Committee. The said Committee did not communicate its order and the petitioner filed two other writ petitions and finally filed the present Writ Petition No.6200 of 2005. In this writ petition along with reply, the report of Age Determination Committee has also been submitted.
3. It appears that after the order of this Court, the petitioner was got examined from the Medical Board and the Medical Board and Age Determination Committee held that the age of the petitioner recorded as 01-10-1943 appears to be correct. The learned Single Judge held that there was a middle school certificate in which the date of birth was given as 01-09-1951 and, therefore,

came to the conclusion that this certificate should have been followed and the same be treated to be correct date of birth of the petitioner.

4. It would be pertinent to mention here that the petitioner died in the meanwhile. Writ Appeal No.122 of 2014 has been filed by the legal representatives claiming compassionate appointment along with other benefits and Writ Appeal No.234 of 2014 has been filed by the SECL praying that the order of Single Judge be set aside. The main document relied upon by the petitioner is the Middle School Certificate (Annexure P-3) in which the date of birth is reflected as 01-09-1951.
5. It would be pertinent to mention here that this is a certificate purportedly issued by the District Education Officer, Ambikapur (Surguja). The top of certificate shows that it is issued on a form which relates to the year 2000 but the year 2000 has been scored off and thereafter year 1967 has been written. Further, it would be pertinent to mention that below the signatures of the person who has signed on behalf of the District Education Officer, the date mentioned is 15-10-2003.
6. It is true that there is another letter dated 03-04-2003 but that only states that the petitioner Vishnu Prasad had passed Middle School Examination in 1966-67. It does not mention any date of birth.

7. Clause B of Implementation Instruction No.76 (National Coal Wage Agreement III) reads as follows:

“Review/Determination of date of birth in respect of existing employees:

1.(a) In the case of the existing employees Matriculation certificate or Higher Secondary Certificate issued by the recognised University Certificate or Board of 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/instructions prior to the date of employment.”

8. A bare reading of this clause shows that in case of existing employees, the certificates issued by the Board or Educational Department will be treated to be correct provided that these certificates were issued prior to the date of employment. In this case, the certificate has been issued in October, 2003, after the petitioner had retired. We are also of the view that the petitioner who opted to seek retirement cannot thereafter raise a plea that his date of birth was wrongly recorded and he should not have claimed that he could have been retired at a later stage.
9. We may also add that in this case, the original writ petitioner was not entitled to invoke the writ jurisdiction of this Court as mentioned by us, as earlier his date of birth mentioned in the record was 01.10.1943. He was to retire in September or

October, 2003. He, however, sought retirement with effect from 29.02.2003. It was only after he retired that he filed Writ Petition No.3178/2003 in which he claimed that his date of birth was wrongly recorded. We are clearly of the view that a person who has sought voluntary retirement and has been retired cannot turn around and urge that his date of birth has been wrongly recorded. In this behalf, we may make reference to the decision of the Supreme Court in the matter of **Burn Standard Co. Ltd. v. Dinabandhu Majumdar**¹ wherein the Apex Court did not approve of the fact that the High Court had entertained a writ petition seeking correction of date of birth at the fag end of the employee's service. The relevant portion reads as follows: -

“10. Entertainment by High Courts of writ applications made by employees of the Government or its instrumentalities at the fag end of their services and when they are due for retirement from their services, in our view, is unwarranted. It would be so for the reason that no employee can claim a right to correction of birth date and entertainment of such writ applications for correction of dates of birth of some employees of Government or its instrumentalities will mar the chances of promotion of his juniors and prove to be an undue encouragement to the other employees to make similar applications at the fag end of their service careers with the sole object of preventing their retirements when due. Extraordinary nature of the jurisdiction vested in the High Courts under [Article 226](#) of the Constitution in our considered view, is not meant to make employees of Government or its instrumentalities to continue in service beyond the period of their entitlement according to dates of birth accepted by their employers, placing reliance on the so-called newly found material. The fact that an employee of Government or its instrumentality who will be in service for over decades, with no objection

¹AIR 1995 SC 1499

whatsoever raised as to his date of birth accepted by the employer as correct, when all of a sudden comes forward towards the fag end of his service career with a writ application before the High Court seeking correction of his date of birth in his Service Record, the very conduct of non-raising of an objection in the matter by the employee, in our view, should be a sufficient reason for the High Court, not to entertain such applications on grounds of acquiescence, undue delay and laches. Moreover, discretionary jurisdiction of the High Court can never be said to have been reasonably and judicially exercised if it entertains such writ application, for no employee, who had grievance as to his date of birth in his 'Service and Leave Record'—could have genuinely waited till the fag end of his service career to get it corrected by availing of the extraordinary jurisdiction of a High Court. Therefore, we have no hesitation, in holding, that ordinarily High Courts should not, in exercise of its discretionary writ jurisdiction, entertain a writ application/petition filed by an employee of the Government or its instrumentality, towards the fag end of his service, seeking correction of his date of birth entered in his 'Service and Leave Record'—or Service Register with the avowed object of continuing in service beyond the normal period of his retirement.”

10. As pointed out by the Supreme Court, when the change of date of birth does not only affect the employee concerned it affects his juniors also, some may hope to get promotion on the retirement of an employee and if every employee seeks and obtains correction of date of birth at the fag end of the career, it affects the right of the employees. Reference in this regard may be made to the judgment of the Supreme Court in the matter of **GM, Bharat Coking Coal Ltd. v. Shib Kumar Dushad**² wherein the Supreme Court held as follows: -

²(2000) 8 SCC 696

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

11. Similar view has been taken by the Apex Court in the matter of **State of U.P. v. Gulaichi**³. Again this view was reiterated in the matter of **State of Gujarat v. Vali Mohd. Dosabhai Sindhi**⁴. The Supreme Court has clearly held that this Court should normally not entertain the petition filed by the employees for correction of date of birth at the fag end of their service career. As far as the

³(2003) 6 SCC 483

⁴(2006) 6 SCC 537

present case is concerned, the writ petitioner filed the writ petition after he had already retired on seeking voluntary retirement. That is all the more reason why this petition should not have been entertained.

12. In this view of the matter, we feel that appeal filed on behalf of appellant Vishnu Prasad should be dismissed.
13. As far as other Writ Appeal No.234/2014 is concerned, we are clearly of the view that since we have held that the date of birth of Vishnu Prasad is 1-10-1943 as reflected in the official record is correct and since he had retired before filing of the first petition, his heirs cannot claim compassionate employment.
14. In view of the above discussion, the writ appeal No. 234 of 2014 filed by the SECL is allowed and the order of learned Single Judge dated 9-1-2014 is set aside.
15. As far as the writ appeal No. 122 of 2014 filed on behalf of legal heirs of the petitioner Vishnu Prasad is concerned, same is dismissed.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Sd/-
(Sanjay K. Agrawal)
JUDGE