

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 175 of 2016**

Ramchandra S/o Shri Tufani Ram, Aged About 63 Years Ex. Junior Manager,
Bhilai Steel Plant, Quarter No. 3- A, Street E M R, Sector 4, Bhilai, Township,
Durg, Chhattisgarh

---- Appellant**Versus**

1. Steel Authority of India Ltd. Bhilai Steel Plant, Bhilai Through Chief Executive Officer, Bhilai Steel Plant, Bhilai Durg Chhattisgarh
2. State Industrial Court, Raipur Chhattisgarh
3. Labour Court, Durg Chhattisgarh

---- Respondents

For Appellant	:	Shri Rajeev Shrivastava, Advocate.
For Respondent No.1	:	Shri Himanshu Sinha, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Judgment on Board**Per Navin Sinha, Chief Justice****20/04/2016**

1. The present appeal arises from order dated 1.2.2016 in Writ Petition (L) No.30 of 2012. The Learned Single Judge set aside the order of the Industrial Court restoring the order the Labour Court dated 27.9.2010 on the application of Respondent No.1.

2. The Appellant was proceeded with departmentally and dismissed from service on the ground that he had obtained employment by disclosing wrong date of birth. The Labour Court held that there was no procedural flaw in the departmental proceedings. But, it simultaneously opined that if the management relied upon letter No. 4146 dated 24.8.2009 received from the Secondary Board of Education, Raipur, Chhattisgarh in confirmation of the date of birth of the Appellant as 15.7.1948, it should have appropriately recorded the evidence of the Principal of the School or the office bearer of the Secondary Board Education alongwith additional opportunity for evidence to the Appellant. Holding it to be a

procedural flaw in conduct of the proceedings, directions were issued to take further evidence and then decide the issue. Respondent No. 1 challenged it in appeal before the Industrial Court which on 21.12.2010 dismissed the same. Pursuant to the same, in furtherance of the directions of the Labour Court, Respondent No. 1 moved an appropriate application for leading evidence, which was challenged by the Appellant before the Labour Court. On 3.11.2011, the Labour Court rejected the challenge leading to the Appellant questioning the order before the Industrial Court which allowed his objection on 28.4.2011. Respondent No.1 then preferred the writ petition.

3. Learned Counsel for the Appellant submitted that once the Labour Court had held that the departmental proceedings had been completed in accordance with law, there was no occasion to give any further directions for leading fresh evidence by the management to prove the date of birth of the Appellant which was alleged as a misconduct. The redetermination had to be on basis of same materials. Respondent No. 1 could not be provided additional opportunity to fill up lacunae in the evidence.

4. Learned Counsel for Respondent No.1 relied upon the order of the Learned Single Judge contending that it calls for no interference.

5. We have considered the submissions on behalf of the parties.

6. The Learned Single Judge has rightly opined that if there was any procedural flaw in conduct of departmental proceedings, the Labour Court could always give directions for leading further evidence to conclude whether there had been misconduct or not. But to our mind, the question arising for consideration in the present case is extremely short and we are of the considered opinion that there was no occasion for the Labour Court to give any directions for further enquiry, by order dated 27.9.2010.

7. The Appellant was served with a memo of charge with regard to incorrect date of birth disclosed at the time of appointment. List of documents contained letter No. 1272 dated 22.8.2009 written to the Secretary, Board of Education, Raipur, Chhattisgarh, for verification of the date of birth and the reply No. 4146 dated 24.8.2009 received from the Secretary, Board of Education, Raipur, Chhattisgarh,. It was placed as evidence in the departmental proceedings with an opportunity to the Appellant to cross-examine. With regard to the aforesaid letters, the Appellant in cross-examination stated that he had nothing to say in the matter.

8. In a departmental proceedings, interference is called for only if there are procedural flaws in conduct of the same. The jurisdiction lies if there is any error in the decision making process and not against the final decision. If the Labour Court would have found any procedural infirmity in the decision making process, as opined by the Learned Single Judge it was fully empowered to call upon the management to lead further evidence. But, in the present case, the Labour Court itself held that departmental proceedings had been conducted in accordance with law. Once the communication sent to the Board of Secondary Education and the reply received was not questioned by the Appellant and neither did he offer any explanation with regard to the same, nothing further was required to be proved by the management. The findings in a departmental proceedings are based on preponderance of probabilities which require a minimum of evidence. If any reasonable evidence is available, the question of sufficiency of the same cannot be gone into.

9. We are therefore of the considered opinion that the finding of the Labour Court in the order dated 27.9.2010 was itself inherently contradictory especially in view of the recitals in the imputation of the misconduct that in his own statement before the Vigilance Department on 21.8.2009 the Appellant had accepted that his actual date of birth as per school record is 15.7.1948. The

Labour Court therefore committed an error in proceeding to direct that the Principal of the School or the Officer of the Board of Secondary Education should have been examined. The authenticity of the certificate confirmed by the Secondary Board of Education was not in dispute. It was not even the case of the Appellant that he had applied for any correction of the date of birth. The Labour Court therefore committed serious error in law by travelling beyond its jurisdiction and directing further evidence to be taken when evidence in support of the charge was indisputably already available on record and there was no procedural infirmity in the conduct of the departmental proceedings.

10. We are therefore unable to uphold the order of the Learned Single Judge to the extent that the matter has been remanded to the Labour Court for proceeding in accordance with order dated 27.9.2010. That part of the order is accordingly set aside.

11. The appeal is dismissed with the aforesaid modification of the order under appeal.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE