

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.13566 OF 2011

Date: 17.10.2016

Between:

Mane Anjaiah, S/o. Rajaiah,
Age 58 years, E.C.No.0965098,
R/o. T20511, I.B. Colony,
Godavarikhani, Karimnagar District

.... Petitioner

And

The Singareni Collieries Company Limited,
Kothagudem, Khammam District,
A.P. rep., by its Chairman and Managing
Director and others

.... Respondents



The Court made the following:

HON'BLE SRI JUSTICE P.NAVEEN RAO

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ORDER:

Petitioner joined service of the Singareni Collieries Company Limited (for short, 'the respondent - Company') as Badli Coal Filler on temporary basis on 16.07.1974. He was made permanent with effect from 01.08.1975. Having passed relevant examinations under Coal Mines Regulations, 1957, he was awarded Certificate of Short Firer on 04.03.1983, Sardar Certificate on 07.03.1988 and Overman' Certificate on 16.10.1992. In all these certificates, the date of birth of the petitioner was recorded as 05.07.1952. The petitioner was served with Memo dated 29.12.2003 informing him that he would be attaining the age of superannuation on 16.07.2011. He was informed that his date of birth was recorded as 16.07.1951. Thereafter, the age of the petitioner was determined by the Area Determination Committee on 25.03.2004 and recorded his age as 23 years as on 16.07.1974. Petitioner was informed of the determination of his age as 23 years as on 16.7.1974 vide Memo dated 4.4.2004. The petitioner challenges the above proceedings by which his date of birth was shown as 16.07.1951 and sought continuation in service until he attains the age of 60 years by taking date of birth as recorded in the certificates issued in the years 1983, 1988 and 1992 respectively, referred to above, as 05.07.1952.

2. Heard learned counsel for the petitioner and learned Standing Counsel for the respondent – Company.

3.1. Learned counsel for the petitioner would submit that the petitioner studied upto IX Class and his School Leaving Certificate discloses his date of birth as 05.07.1952. Even though the petitioner submitted the said certificate at the time of joining into service, the same was not taken into consideration and mechanically his age was determined as 23 years. At that stage, no date of birth was shown. But, later point of time, date of birth is notionally arrived at 16.07.1951 by treating the age of the petitioner as 23 years as on 16.07.1974. No authentic exercise was undertaken to determine the age of the petitioner.

3.2. She would further submit that the respondent – Company is governed by the National Coal Wage Agreement – III and Implementation Instruction No.76 notified by the Joint Bipartite Committee for the Coal Industry, dated 25.04.1988. In terms of Clause (B), it is mandatory for the employer to undertake a review of the date of birth entry in respect of existing employees and while undertaking such exercise, it is mandatory for the employer to treat the date of birth entered in the Certificates issued under the Mines Act as authentic. In view of the said provision, it is mandatory for the employer to treat the date of birth of the petitioner as 05.07.1952 as recorded in the certificates issued in the years 1983, 1988 and 1992. She would further submit that the order of retirement from service with effect from 31.07.2011 was illegal.

3.3. The genuineness of educational certificates of the petitioner is not disputed by the employer. The petitioner left the

school much prior to employment. His school leaving certificate was also issued long before securing employment.

3.4. Form 'B' mandates mention of date of birth, whereas no date of birth was mentioned.

3.5. There is no inordinate delay in prosecuting the grievance. The delay of about seven years in instituting the Writ Petition is not fatal, more so, when employer did not comply mandatory requirement as envisaged in the Agreement. She placed relevance on **Bharat Coking Coal Limited v. Chhota Birsa Uranw¹**.

4.1. Sri N. Krishna Rao, learned Standing Counsel for the respondent – Company, would fairly submit that the National Coal Wage Agreement – III and Implementation Instruction No.76 are binding on the respondent/employer.

4.2. He would further submit that the said instructions are not applicable to a person whose date of birth is determined under Mines Regulations after the person joins service and therefore, the claim of the petitioner is not valid. According to him, Clause (C) of Instructions No.76 is applicable in the case of the petitioner and in terms thereof, age of the petitioner was determined as 23 years as on 16.07.1974. He would therefore justify the order of retirement from service with effect from 31.07.2011.

4.3 He would further submit that the determination of age made in the year 2004 was accepted by the petitioner and an endorsement to this extent was made in the assessment order.

¹ (2014) 12 SCC 570

A specific plea is raised in paragraph No.13 of the counter and the same is not controverted. In support of the said contention, he has also produced Xerox copy of the assessment order. He would submit that in all the relevant records his age was shown as 23/24 years as on 16.7.1974 and nowhere his date of birth was shown as 5.7.1952. Petitioner never protested on the age reflected in the service records.

4.4 He would further submit that petitioner was not vigilant to work out his legal remedies. This writ petition is filed after 7 years of intimation given to him on date of retirement. In support of said contention he placed reliance on decision of this Court in **Sundilla Lingaiah Vs Singareni Collieries Company Limited**².

5. The issue for consideration is whether petitioner is entitled to seek correction of date of birth in service records?

6. In substance the contention of learned counsel for petitioner is the employer has to correct the entry of date of birth in service records by duly accepting the entries made in the certificates issued by competent authority under the Mines Act and due to their lapses injustice is caused to petitioner and, therefore, in the facts of this case delay in filing the writ petition is not fatal to deny continuation in service till he actually attains 60 years.

7. To appreciate the said contention, three aspects need to be noticed. No material is placed on record to show that at the time of entry into service petitioner produced school leaving

² 2016 (4) ALT 407

certificate and contrary to the entry on the said certificate, date of birth was recorded. Categorical assertion of employer that no such certificate was produced is not controverted. Secondly by memo dated 29.12.2003, petitioner was informed that on 16.07.2011 he would be attaining the age of superannuation; by memo dated 4.4.2004 petitioner was informed that his age was assessed by age determination committee as 23 years as on 16.7.1974. As asserted by respondent company, petitioner accepted the determination of age by age determination committee and did not protest till this writ petition is filed. Thirdly, this writ petition is filed after 7 years. No material is placed on record to show that petitioner has protested against recording of his age as 23 years as on 16.7.1974 but no action was taken by employer.

8. It is appropriate to note that petitioner accepted the age determination made in the year 2004 and made an endorsement to that effect. It reads:

“Undertaking of the Employee

I accept that the decision of the Area Age Determination Committee has been explained. I fully understood and accepts the decision at my free will.”

There is no whisper of such undertaking by petitioner in the affidavit filed in support of the writ petition. There is no denial to the assertion of respondent company in their counter.

9. In **Sundilla Lingaiah** facts are identical to the facts in this case. It was also a belated claim and writ petition was filed one year after the notice of retirement was issued and just about the time of retirement. This Court considered the precedent decisions on the subject of correction of entry of date of birth in

service record, more particularly several decisions concerning same employer, and rejected the claim for correction of date of birth. This Court held that petitioner could not have waited for one year after notice of retirement was served to file writ petition.

10. Even assuming that employer was negligent in not recognizing the entry of date of birth in the three certificates issued to him in the year 1983, 1988 and 1992 to correct the service record, the conduct of petitioner disentitles him to equitable relief. At no point of time even after he secured three certificates, he represented to the employer to correct his date of birth entry. He earned several promotions. He would have number of occasions to note the entry of date of birth (age determined). In paragraph 4 of the affidavit he admits that no issue of date of birth was raised till the year 2003. Even after 2003, he kept quiet till filing of this writ petition. This writ petition is filed 7 years after the intimation of date of retirement was furnished. No explanation is furnished for invoking the jurisdiction of this Court after 7 years and just few weeks before his retirement. Learned counsel for petitioner sought to shift the blame on the employer for not correcting the date of birth, to cover up the latches on the part of the petitioner in filing instant writ petition.

11. It is settled principle of law that even if an employee has a valid service grievance and employer has denied the service benefit to which employee is legally entitled, he cannot sleep over such right and make a belated claim. The delay and latches, more particularly in service disputes, is fatal to a claim.

12. In **State of Madhya Pradesh Vs. Premlal Shrivastava**³, Supreme Court found upon entertaining belated claims to correction of entry of date of birth in service record. Supreme Court held:

“10. In *State of U.P. v. Shiv Narain Upadhyaya* [(2005) 6 SCC 49 : 2005 SCC (L&S) 794] while reiterating the aforesaid position of law, this Court has castigated the practice of raising dispute by the public servants about incorrect recording of date of birth in their service book on the eve of their retirement.

11. Viewed in this perspective, we are of the opinion that the High Court committed a manifest error of law in ignoring the vital fact that the respondent had applied for correction of his date of birth in 1990 i.e. 25 years after his induction into service as a constable. It is evident from the record that the respondent was aware ever since 1965 that his date of birth as recorded in the service book is 1-6-1942 and not 30-6-1945. It had come on record of the Tribunal that at the time of the respondent's medical examination, his age as on 27-9-1965 was mentioned to be 23 years and his father's name was recorded as Gayadin; and in his descriptive roll, prepared by the Senior Superintendent of Police as well, his father's name was shown as Gayadin and his date of birth as 1-6-1942 and this document was signed by the respondent and the form of agreement known as “Mamuli Sipahi Ka Ikrarnama” was filled up by the respondent himself with the very same particulars. Therefore, it cannot be said that the decision of the Tribunal rejecting the respondent's plea that it was for the first time in the year 1990, when he was promoted as Head Constable, that he noticed the error in the service record, was vitiated.

12. Be that as it may, in our opinion, the delay of over two decades in applying for the correction of date of birth is ex facie fatal to the case of the respondent, notwithstanding the fact that there was no specific rule or order, framed or made, prescribing the period within which such application could be filed. It is trite that even in such a situation such an application should be filed which can be held to be reasonable. The application filed by the respondent 25 years after his induction into service, by no standards, can be held to be reasonable, more so when not a feeble attempt was made to explain the said delay. There is also no substance in the plea of the respondent that since Rule 84 of the M.P. Financial Code does not prescribe the time-limit within which an application is to be filed, the appellants were duty-bound to correct the clerical error in recording of his date of birth in the service book.”

³ (2011) 9 SCC 664

13. In **Eastern Coalfields Limited Vs. Bajrangi Rabidas**⁴

Supreme Court held as under:

“.....It is well settled in law that jurisdiction of the High Court under Article 226 of the Constitution is equitable and discretionary. The power of the High Court is required to be exercised “to reach injustice wherever it is found”. In *Sangram Singh v. Election Tribunal* [AIR 1955 SC 425 : (1955) 2 SCR 1] , it has been observed that jurisdiction under Article 226 of the Constitution is not to be exercised whenever there is an error of law. The powers are purely discretionary and though no limits can be placed upon that discretion, it must be exercised along recognised lines and not arbitrarily and one of the limitations imposed by the courts on themselves is that they will not exercise jurisdiction in such class of cases unless substantial injustice has ensued or is likely to ensue. That apart, the High Court while exercising the jurisdiction under Article 226 of the Constitution can always take cognizance of the entire facts and circumstances and pass appropriate directions to balance the justice. The jurisdiction being extraordinary it is required to be exercised keeping in mind the principles of equity. It is a well-known principle that one of the ends of equity is to promote honesty and fair play..... (paragraph 19”

14. I am in agreement with the view taken by learned single Judge of this Court in **Sundilla Lingaiah**. No case is made out to issue direction to correct the date of birth entry in the service record of petitioner. Petitioner turned around against his own statement that he would not make any further claim on correction of date of birth entry, only to work for some more time. The writ petition is also hit by delay and latches. I see no merit in the writ petition. For all the aforesaid reasons, writ petition fails. It is accordingly dismissed.

Miscellaneous petitions if any pending shall stand closed.

No costs.

JUSTICE P.NAVEEN RAO

Date: 17.10.2016
Kkm/tvk

⁴ (2014) 13 SCC 681

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