

**THE HON'BLE SRI JUSTICE A. RAJASHEKER  
REDDY**

**WRIT PETITION No.578 OF 2006**

**ORDER:**

This Writ Petition is filed seeking to declare the proceedings, dated 01.01.2005, issued by respondent No.2, determining the age of the petitioner as 60 years as on 28.01.2006 and fixing the date of superannuation as 31.01.2006, as illegal and arbitrary and consequently, permit the petitioner to continue in service till 31.01.2010.

2. The case of the petitioner is that he was initially appointed as Badili Filler in the year 1966 and subsequently, promoted as Coal Filler. On 31.01.1978, he passed Gas Testing examination conducted by the Chairman of the Board of Mining Examinations under the Mines Act, 1952. On 26.04.1978, he passed Short Firer examination and on 12.02.1981, he passed Sirdar examination conducted under the Coal Mines Regulations, 1957. At the time of appointment, he has given all his personal particulars to the respondents, including his date of birth as 05.12.1950 by producing the School Leaving Certificate issued by the Government Junior College, Bellampalli, as proof thereof. The concerned officials took his

signatures and thumb impressions for statutory compliance under the Mines Act and informed him that all the particulars noted by them would be incorporated in the service record. Thereafter, he was promoted as Mining Sirdar and posted at Goleti No.1 under the supervision of respondent No.2. In all the Certificates as well as in the identity card issued by the statutory authority, the date of birth of the petitioner was mentioned as 05.12.1950. The statutory Registers maintained under the Coal Mines Act, more particularly 'B' Register also contain his date of birth as 05.12.1950 and there is no dispute so far as his date of birth is concerned. While the petitioner was working at Mahavir Khani as Mining Sirdar, respondent No.1 vide letter, dated 21.09.1996/08.10.1996 called upon him to produce the following certificates with regard to the change of his date of birth:

- “1. Date of appointment in the company.
2. Age as per service book, 'B' Register & Form 'A' of CMPF.
3. Date of birth as per statutory certificate.
4. Date of birth as per study certificate.
5. Service Book (original).”

Accordingly, he furnished all the particulars called upon and the respondents confirmed his date of birth as 05.12.1950 and not expressed any doubt

regarding his date of birth as 05.12.1950, according to which, he attains the age of superannuation on 29.01.2010, but the respondents issued impugned proceedings, dated 01.01.2005, bearing Ref.No.BPA/Glt.1/M/R/05/3273, communicating that he will attain the age of superannuation i.e., 60 years on 28.01.2006 and shall retire from service on 31.01.2006. Being aggrieved by the same, he submitted all the Certificates concerned to the respondents and sought for withdrawal of impugned proceedings, dated 01.01.2005, and the respondents informed him that they will forward the copies of his Certificates to the personal department and as such, he was under a *bona fide* impression that the respondents will withdraw the impugned proceedings. It is stated that due to the disputes between the Unions and Management with regard to the age of the employees, settlement was arrived at and Circulars were issued, and Clause B (1) of Circular No.P.49/4702/IR/1270, dated 01.08.1988, reads as follows:

“B) 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 recognized Universities or Board of Middle Pass Certificate issued by the Board of Education and/or Department of Public Instrumentation 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.”

It is also stated that the respondents have not followed the aforesaid Circular to reduce manpower by unhealthy and unethical means and they ought to have considered the School Leaving Certificate, which shows his date of birth as 05.12.1950. It is also stated that all the statutory Certificates also contain the same date of birth. As the respondents have not withdrawn the impugned proceedings, he filed the present Writ Petition.

3. Counter affidavit is filed by the respondents stating that as the petitioner was a ‘workman’ under the Industrial Disputes Act, he has an alternate, effective and efficacious remedy for redressal of his grievance under the Industrial Disputes Act and as such, the Writ Petition is not maintainable. It is also stated that the petitioner was examined by the Company’s Medical Officer,

who has assessed his age as 20 years as on 28.01.1966, when he entered into Company's service and as per the records of the Company, he has to retire from service on 31.01.2006. The respondents denied the averment that at the time of joining, the petitioner has given his date of birth as 05.12.1950 and produced School Leaving Certificate issued by the Government Junior College, Bellampalli, in proof thereof. The averment of the petitioner that the concerned officials took his signatures and thumb impressions, is also denied. It is also stated that the petitioner has applied for Transfer Certificate on 25.09.1976 and the said Certificate was issued by the Government Junior College, Bellampalli, on 12.10.1976 and hence, the contention of the petitioner that he had produced the Transfer Certificate in the year 1966 is absolutely fallacious and the petitioner is put to strict proof thereof. The averment that the petitioner's date of birth is 05.12.1950 is also denied. It is also stated that in the 'B' Register the petitioner's age was recorded as 20 years as on 28.01.1966. It is also stated that no settlement was arrived at between the Unions and Management regarding alteration of date of birth of the employees and the guidelines issued by the Joint Bipartite Committee for Coal Industry

are followed by the respondents and the Circular referred to above is not applicable to the petitioner's case. It is also stated that the respondents agreed to incorporate the date of birth of the petitioner as mentioned in the School Leaving Certificate is not correct and hence, sought for dismissal of the Writ Petition.

4. Learned counsel for the petitioner submits that at the time of entry into service, though the petitioner has produced the School Leaving Certificate, the respondents have not taken the same into account and without there being any basis, they have taken the age of the petitioner as 20 years as on 28.01.1966 and there is no entry in the 'B' Register that the age of the petitioner was 20 years at the time of his appointment. She further submits that though the petitioner has submitted all the Certificates pursuant to the letter, dated 21.09.1996/08.10.1996, respondents have not corrected the date of birth of the petitioner and as such, issuance of the impugned proceedings stating that the petitioner will retire on 31.01.2006 is illegal and arbitrary. She also submits that the review/determination of date of birth of the existing employees have to be carried out as per Circular, dated 01.08.1988, but the

respondents have not done such an exercise, even though the petitioner has produced documents in pursuance of the notice, dated 21.09.1996. She further submits that even the statutory Certificates issued under the Mines Act and Coal Mines Regulations go to show that the petitioner's date of birth is recorded as 05.12.1950 and the Transfer Certificate issued by the Government Junior College, Bellampalli, also show that the petitioner's date of birth was 05.12.1950 and as such, the petitioner cannot be made to retire in the year 2006 and as per the Certificates, he is entitled to continue in service upto the end of December, 2010. She also submits that the respondents have not followed the Circular, dated 01.08.1988, and though there is no discrepancy with regard to the age of the petitioner, the respondents have changed the date of birth of the petitioner and the same is nothing but violation of Section 9A of the Industrial Disputes Act. She also submits that no records were produced pertaining to the period the petitioner worked at Bellampalli. She also submits that no record is produced to show that medical examination was conducted on the petitioner so as to fix his age as 20 years at the time of entry into service. She also submits that the Transfer Certificate issued by the

Government Junior College, Bellampalli, can be taken as authentic for determination of age as per Circular, dated 01.08.1988. She also submits that in the identity card issued by the respondent - Company, the date of birth of the petitioner was shown as 05.12.1950, which clearly goes to show that the petitioner is entitled to review/determination of the date of birth as per Circular, dated 01.08.1988. In support of her contentions, the learned counsel has placed reliance on the judgments of this Court in **Elpula Bhoomaiah v. Singareni Collieries Co. Ltd., Godavarikhani, Karimnagar District and another**<sup>[1]</sup> and **B. Komaraiah v. The Singareni Collieries Co. Ltd. & another**<sup>[2]</sup>.

5. On the other hand, learned Standing Counsel for the respondent - Company submits that the advance notice of retirement was given to the petitioner by way of impugned proceedings in January, 2005 and the Writ Petition was filed after a period of one year i.e., on 06.01.2006 and within few days of filing of the Writ Petition, the petitioner is to be retired, which goes to show that the petitioner is not serious about the date of birth. He also submits that the 'B' Register shows the age of the

petitioner as 20 years as on 28.01.1966 and as such, the contention of the petitioner that the 'B' Register contains the date of birth of the petitioner as 05.12.1950 is not correct. He also submits that in service records, the age of the petitioner was entered as 20 years as on 28.01.1966. He also submits that the petitioner deliberately has not produced any Certificate at the time of entry into service, because if the date of birth as contended by the petitioner i.e., 05.12.1950 is taken into consideration, he would be only 16 years of age and as such, he would not be entitled to employment, being a minor. He also submits that the original Transfer Certificate was obtained in the year 1976 and as such, it can be said that he has not produced the said Certificate at the time of entry into service. He also submits that these are all disputed questions of fact, which cannot be decided in the Writ Petition, more so the petitioner has approached this Court at the fag end of his service. In support of his submissions, he has relied on the decisions of this Court in **Mathangi Devasahayam v. Jetty Manikyamma and others**<sup>[3]</sup> and **P. Manikya Rao @ P. Manikyam v. APSRTC, Musheerabad, Hyderabad and another**<sup>[4]</sup>, and

on the decision of the Honourable Supreme Court  
i n **G.M. Bharat Coking Coal Ltd., West  
Bengal v. Shib Kumar Dushad and others**<sup>[5]</sup>.

6. In this case, it is to be noticed that if the petitioner's date of birth is taken as 05.12.1950, he would not be eligible for employment as on 28.01.1966, as he would be a minor at that time. Obviously, petitioner has suppressed the same and the respondent - Company has determined the age of the petitioner as 20 years as on the date of entry into service and recorded the same in the concerned records as per the statement of petitioner. Though the petitioner states that he has filed an application for change of date of birth, the same was denied by the respondents. The Circular, dated 01.08.1988, in fact, is against the petitioner. Further, though the respondents have given advance notice, dated 01.01.2005, by way of impugned proceedings, stating that the petitioner has to retire from service on 31.01.2006, the Writ Petition was filed after a period of one year i.e., in January, 2006, and when these circumstances weigh against the petitioner, the contention of the petitioner that the 'B' Register contains his date of birth as 05.12.1950 is also not correct. The 'B' Register shows the age of the petitioner as 20

years as on the date of entry into service, which also falsifies the case of the petitioner. The Honourable Apex Court in **G.M., Bharat Coking Coal Limited**'s case (supra 5) held as under:

"In the case of *Burn Standard Co. Ltd. v. Dinabandhu Majumdar* (1995) 4 SCC 172, this Court sounded a caution regarding entertaining writ petitions by High Courts for correction of date of births. This Court observed: (SCC pp.178-79, paras 10-12)

"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 their 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 has been in service for over decades, with no objection 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 their 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."

7. In **P. Manikya Rao**'s case (supra 4), this Court has held as under:

"12. In view of the aforementioned judgments cited by the learned Standing

Counsel for the respondent Corporation, the apex Court held that application for change of date of birth of an employee cannot be entertained at the fag end of his service. The petitioner, on his own admission, stated that he has not made an application seeking change of date of birth initially and so, now at the fag end of his service, he cannot blame the respondent Corporation. Accordingly, the petitioner is disentitled for the relief claimed. There are no merits in the Writ Petition and the Writ Petition is liable to be dismissed.”

8. By relying on the aforesaid decisions, I am also of the view that at the fag end of the service, petitioner is disentitled to the claim laid. The judgment relied on by the learned counsel for petitioner in **Elpula Bhoomaiah**’s case (supra 1) pertains to the case where the respondent authorities tried to change the date of birth mentioned in ‘B’ Register without notice to the petitioner therein and as such, this Court has interfered with. In the present case, the date of birth entered in the ‘B’ Register is in consonance with the date of birth mentioned in the impugned proceedings and as such, the judgment has no application to the facts of this case. If the date of birth of the petitioner is taken as 05.12.1950, as alleged by him, at the time of entry into service, the petitioner would be only 16 years and as such, he would be disentitled for employment and

suppressing the same, the petitioner has entered into service and later sought for review of the date of birth. In view of above facts and circumstances, the petitioner is not entitled for any relief under Article 226 of the Constitution of India.

9. Accordingly, the Writ Petition is dismissed. Miscellaneous Petitions, if any, pending in this Writ Petition, shall stand closed. No costs.

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**RAJASHEKER REDDY, J**  
March 03, 2016  
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[\[1\]](#) 2011 (6) ALD 244  
[\[2\]](#) 1992 (2) ALT 198  
[\[3\]](#) 2014 (6) ALT 81  
[\[4\]](#) 2016 (1) ALD 278  
[\[5\]](#) (2000) 8 SCC 696